

UNITED STATES OF AMERICA, :
 :
 :
 vs. :
 : Docket No. 10-739M-11
 :
 DANIEL CHOI, :
 :
 : Washington, D.C.
 : Monday, August 29, 2011
 : 9:46 a.m.
 :
 :
 :
 X

APPEARANCES :

Court Reporter: CHANTAL M. GENEUS, RPR, CRR
Certified Realtime Reporter
Registered Professional Reporter
United States District Court
333 Constitution Avenue, NW
Washington, D.C. 20001

Proceedings reported by machine shorthand. Transcript produced by computer-aided transcription.

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1	Map of White House grounds	8	11
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I N D E X (Continued)

E X H I B I T S

GOV'T
NO.

DESCRIPTION

MARKED

ADMITTED

32	Distance photograph of frontal view of protesters	8	23
2	DVD video of 11/15/10 demonstration	31	31
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1 P R O C E E D I N G S

2 (Whereupon, at 9:46 a.m. the proceedings
3 commenced, and the following ensued:)

4 THE COURTROOM DEPUTY: This is criminal case
5 year 2010, 739M, United States versus Daniel Choi.
6 Angela George for the government, Robert J. Feldman
7 for the Defendant. This is a Bench trial.

8 THE COURT: Good morning. You may call your
9 first witness.

10 MS. GEORGE: Good morning, Your Honor. The
11 government filed a motion yesterday. I called
12 chambers and faxed a copy to chambers in reference
13 to --

14 THE COURT: Yeah, that's what I read this
15 morning.

16 MS. GEORGE: And so the government would
17 like to know if we can resolve the motion in limine
18 before we can proceed to trial.

19 THE COURT: I thought the motion in limine
20 went to the Defendant's defenses. You are the
21 prosecutor; aren't you?

22 MS. GEORGE: Yes, Your Honor, but the
23 government is arguing that he does not have a right,
24 as a matter of law, to even raise that one defense,
25 the defense of impossibility.

1 THE COURT: We haven't gotten to his defense
2 yet. You're in your case. I'll rule on it then.

3 MS. GEORGE: The motion also addresses two
4 other issues.

5 THE COURT: What are they? Miss George,
6 you've got me at a disadvantage. I didn't have any
7 power yesterday. We had a hurricane.

8 MS. GEORGE: I'm sorry. Since I faxed it
9 and I left a message, I thought the Court would
10 have seen it. I should have called --

11 THE COURT: I saw it for a few moments when
12 I read it, but -- all right, as I understood it, you
13 were objecting, as you did on the telephone
14 conversation we had last week, that any claim of
15 selective prosecution was insufficient, as a matter of
16 law, because you can't show he was signaled out upon a
17 basis that falls within the scope of the 5th and 14th
18 Amendments.

19 Now, that would go to his defense, right?

20 MS. GEORGE: No. Actually, Your Honor, the
21 case law indicates that it is not a defense.

22 THE COURT: That's what I'm saying. But
23 unless and until we get to your making out a prima
24 facie case of his guilt, why are his defenses at all
25 relevant at this point in the process?

1 MS. GEORGE: Because the claim of selective
2 prosecution is not a defense at all.

3 THE COURT: He will get to that when he gets
4 to his defenses. You have to prove him guilty first.

5 MS. GEORGE: Yes, Your Honor, but the motion
6 addresses whether defense counsel can ask questions in
7 the government's case --

8 THE COURT: Why don't you wait until the
9 questions are asked so we can have it in context?

10 MS. GEORGE: The defense has already said he
11 wants to ask the questions.

12 THE COURT: I asked you to call the first
13 witness. Please do so.

14 MS. GEORGE: Can I have a little indulgence?

15 THE COURT: Not now. No, you can't. We'll
16 get to it when we get to it. Please call your first
17 witness.

18 MS. GEORGE: Would the Court like to
19 consider the other motions in limine? There are
20 three.

21 THE COURT: Not at this time. Please call
22 your first witness.

23 MS. GEORGE: The government calls Officer
24 Easter to the stand.

25 THE COURT: Officer Easter, please.

1 MS. GEORGE: May I step out to get Officer
2 Easter?

3 THE COURT: Are you invoking the rule on
4 witnesses, Ms. George?

5 MS. GEORGE: Your Honor, I am not. Defense
6 counsel is. The government wouldn't object. All the
7 witnesses are in the witness room.

8 THE COURT: Any witnesses for the defense?

9 MR. FELDMAN: Yes, Your Honor. Thank you
10 very much, Your Honor.

11 Good morning, Your Honor. I move to exclude
12 Captain Petrieangelo.

13 THE COURT: That would be great. Captain,
14 step out, please.

15 MR. FELDMAN: Thank you, sir.

16 THE COURTROOM DEPUTY: Raise your right
17 hand, sir.

18 CAMERON EASTER,
19 a witness produced on call of the Government, having
20 first been duly sworn, was examined and testified as
21 follows:

22 MS. GEORGE: Court's indulgence, please.

23 (Pause.)

24 MS. GEORGE: Your Honor, before the
25 government begins, I would like the record to reflect

1 I provided Government Exhibit Number 3 to defense
2 counsel, as well as a copy of Government's Exhibit
3 Number 1. Number 3 is a one-page copy of handwritten
4 notes for Officer Easter, and Government's Exhibits 31
5 and 32 were provided to defense counsel via a DVD or
6 CD, whatever technologically they're called.

7 (Government's Exhibit Numbers 1, 3,
8 31, and 32 were marked for
9 identification.)

10 DIRECT EXAMINATION

11 BY MS. GEORGE:

12 Q. Sir, could you please state your name for
13 the record for me and spell your first and last name?

14 A. Cameron Easter, C-A-M-E-R-O-N; Easter, like
15 the holiday, E-A-S-T-E-R.

16 Q. Where do you work, sir?

17 A. I work for the United States Park Police.

18 Q. Are you a law enforcement officer with that
19 agency?

20 A. Yes, ma'am.

21 Q. And could you please tell the Court how long
22 you've been an officer with the park police?

23 A. I've been an officer with the park police
24 for over two years.

25 Q. And could you please tell the Court what

1 your rank is?

2 A. Private.

3 Q. And what are your duties as a private
4 officer with the park police?

5 A. As a private with the U.S. Park Police, my
6 duties include patrol of whatever area I'm assigned to
7 on a daily basis.

8 Q. Now, Officer Easter, I would like to direct
9 your attention to November 15, 2010. Were you working
10 and on duty that day?

11 A. Yes, ma'am.

12 Q. And before we talk about these specific
13 events of that day, would you please tell the Court,
14 during your tenure as a park police officer, have you
15 had the occasion, prior to November 15th, 2010, to be
16 assigned to the area known as the White House
17 sidewalk?

18 A. Yes, ma'am, I've been assigned to that area
19 before.

20 Q. And could you please tell the Court, prior
21 to November 15th, 2010, what period of time were you
22 assigned to that area?

23 A. I'm sorry?

24 Q. For what period of time were you assigned to
25 that area?

1 A. Daily, or --

2 Q. From what date to what date? What month to
3 what month? What year to what year?

4 A. From March 2010 to November 2010 I was an --
5 I was assigned to the area of the White House sidewalk
6 on average at least once a month.

7 Q. And when you were assigned there, what were
8 your duties -- let me just ask this: What beat is
9 that considered?

10 A. That's beat 145, which is technically
11 Lafayette Park.

12 Q. What district is it characterized as for the
13 purposes of park police?

14 A. District 1. Central district.

15 Q. While you were assigned there during that
16 period of time, what were your duties with reference
17 to the White House sidewalk in that area?

18 A. When the officer is assigned to beat 145,
19 they are responsible for patrolling the areas between
20 H Street, the north side of Lafayette Park, all the
21 way to the White House fence on the south side of
22 Lafayette Park; and there's barriers in between.

23 Q. On November 15, 2010, did you have that
24 assignment?

25 A. Yes, ma'am.

1 Q. And could you please tell the Court what
2 time your tour of duty started on November 2010?

3 A. 0600.

4 Q. What time was it due to end?

5 A. 1800.

6 MR. FELDMAN: No objection.

7 MS. GEORGE: Your Honor, I believe defense
8 counsel says he doesn't have objection to government
9 exhibit -- I'm sorry, it should be Government Exhibit
10 Number 1.

11 THE COURT: There being no objection, it
12 would be admitted. You could put it on that board
13 there.

14 (Government's Exhibit Number 1,
15 previously marked for
16 identification, was received in
17 evidence.)

18 MS. GEORGE: Is there a Smart Board?

19 THE COURT: There's a board --

20 MS. GEORGE: Okay, I can move that.

21 THE COURT: You can rest it on that.

22 MS. GEORGE: Okay, thank you.

23 THE COURT: You probably want to get it
24 close to the witness if you are going to bring it to
25 his attention.

1 MS. GEORGE: Can everybody see the exhibit?

2 (No response.)

3 BY MS. GEORGE:

4 Q. Officer, just for purposes of the record,
5 does Government Exhibit Number 1 show the general
6 layout of the area you just described in your
7 testimony?

8 A. Yes, ma'am.

9 Q. And could you please -- if you need to, step
10 down from the witness stand and mark with this green
11 dot that has your initials CE on it where you were
12 standing on Lafayette Park on November 15 -- let me
13 ask this: When you reported to duty that day, you
14 said it was 6 a.m. in the morning?

15 A. Yes, ma'am.

16 Q. At some point in time or before you got
17 there, did you receive any information that there
18 would be a demonstration at the White House sidewalk?

19 A. Yes, ma'am.

20 MR. FELDMAN: Objection. Hearsay.

21 THE COURT: Overruled.

22 BY MS. GEORGE:

23 Q. And could you please tell the Court what, if
24 any, point in time did you notice that that
25 demonstration started to occur?

1 A. What time did I notice?

2 Q. Approximately, um-hmm.

3 A. Around -- a little after 1345 hours.

4 Q. What time would that be in civilian time?

5 A. A little after 1:45 p.m.

6 Q. Could you please tell the Court what you
7 observed?

8 A. At that point I observed a group of
9 individuals forming in a group on the north side,
10 north central side of Lafayette Park.

11 Q. I'm gonna put "G" for "group" on a green
12 dot. Could you please mark on Government Exhibit
13 Number 1 the area you just mentioned?

14 A. (Complying.)

15 Q. And can you take the green dot with your
16 initials on it and put it in the place where you were
17 standing when you saw that group forming?

18 A. (Complying.)

19 Q. Now, would you please tell the Court, did
20 you have an opportunity to actually estimate the
21 distance between those two green dots?

22 A. Yes, ma'am.

23 Q. Would you please tell the Court what is the
24 distance between them?

25 A. It's about 220 yards.

1 Q. And could you please tell the Court what --
2 at that distance, was there any blocking -- anything
3 blocking your line of sight from where you were
4 standing to where the group was forming at that point
5 in time?

6 THE COURT: Besides the statute of Andrew
7 Jackson.

8 BY MS. GEORGE:

9 Q. Well, was the statute of Andrew Jackson
10 blocking your line of sight?

11 A. No.

12 Q. Was anything else blocking your line sight
13 at that point in time?

14 A. No.

15 Q. And could you please tell the Court what you
16 saw?

17 A. I saw a group of individuals forming
18 together in a group, and many of them were wearing
19 various military uniforms.

20 Q. And were some of them not in uniform?

21 MR. FELDMAN: Objection. Leading.

22 THE COURT: Overruled.

23 THE WITNESS: Some of the people that seemed
24 to be a part of this group were in civilian clothes.

25 BY MS. GEORGE:

1 Q. And why are you characterizing it as a
2 group? What were they doing to make you make that
3 determination?

4 A. These people -- the persons were facing each
5 other conversating, appeared to be conversating. They
6 were very close, shoulder length apart.

7 Q. And approximately how many people were in
8 the group?

9 A. I would say roughly twenty.

10 Q. And at that point in time that you observed
11 them doing those things -- let me just ask it this
12 way: Did they move at some point later after you
13 observed that?

14 A. Yes, ma'am.

15 Q. Would you please tell the Court how much
16 time passed before they moved?

17 A. About ten minutes.

18 Q. And could you please tell the Court how they
19 moved and where they went?

20 A. The group later moved south along Lafayette
21 Park down the center towards the White House fence.
22 They walked behind the statute -- well, the statute
23 was in front of me and the group. As the group came
24 around the side of the statute here, they arrived in
25 this section, appearing to be walking two by two or

1 marching, but they were walking. I would say they
2 were walking. They were marching to a cadence, so...

3 Q. Did they reach Pennsylvania Avenue at some
4 point in time?

5 A. Yes, ma'am.

6 Q. What did they do as they reached
7 Pennsylvania Avenue?

8 A. They stopped walking, and for a brief point
9 in time, and they later crossed Pennsylvania Avenue.

10 Q. At that point in time were there any people
11 on Pennsylvania Avenue when they were trying to cross
12 Pennsylvania Avenue?

13 A. Yes, ma'am.

14 Q. And if you could tell, if you recall, what
15 were those people doing there, the people that were on
16 Pennsylvania Avenue?

17 MR. FELDMAN: Objection. Not clear, Judge.
18 Which people?

19 MS. GEORGE: The people on Pennsylvania
20 Avenue.

21 THE COURT: When they were walking back and
22 forth in an easterly or westerly direction, were there
23 any people there?

24 THE WITNESS: Yes. Those people were
25 walking back and forth.

1 BY MS. GEORGE:

2 Q. As far as you can tell, what were their
3 purposes?

4 MR. FELDMAN: Objection.

5 THE COURT: The people walking up and down.

6 MS. GEORGE: No, east and west.

7 THE COURT: The people walking east and
8 west, were they demonstrating or marching in any way
9 that caught your attention?

10 THE WITNESS: No, sir.

11 THE COURT: Thank you.

12 BY MS. GEORGE:

13 Q. Can you please take the green pen. And you
14 described earlier the path that the group that was
15 walking side by side took. Could you please take the
16 pen, starting at the beginning of the path and drawing
17 all the way down to the point where they finally
18 stopped.

19 And before you do that, can you answer for
20 the Court, the group walking side by side, once they
21 crossed Pennsylvania Avenue, where did they go?

22 A. Right directly in front of the White House,
23 across the White House fence. The area called the
24 White House sidewalk.

25 Q. Can you tell which portion?

1 A. They walked to the fence side.

2 Q. And how long was the fence on the White
3 House sidewalk?

4 A. How long is it?

5 Q. Where does it span from? From what point to
6 what point?

7 A. From West Executive Ave. to East Executive
8 Ave.

9 Q. And what portion of the fence were they
10 standing in front of?

11 A. The center.

12 Q. Could you please take the pen and do as I
13 asked you earlier, start from when they first started
14 and stop in front of the fence, please.

15 A. (Complying.)

16 Q. Just for the record, that path is in a green
17 color along with the green pen?

18 A. Yes.

19 Q. Officer Easter, the group that was side by
20 side as they were walking, were they talking, saying
21 anything? Without telling us what they were saying,
22 were they talking or saying anything?

23 A. They were chanting.

24 Q. And were they making any type of particular
25 movements other than walking?

1 A. No.

2 Q. And what did you do after you observed them
3 reach the center portion of the White House fence?

4 A. They got up on the ledge that the White
5 House fence is on and faced the White House, and they
6 began shouting towards the White House.

7 Q. Did you observe them do anything right at
8 that point that you just described?

9 A. They were facing the White House, shoulder
10 to shoulder facing the White House shouting towards
11 the White House. And later they turned around, faced
12 the crowd, and they all stood shoulder to shoulder.

13 Q. At some point in time, did you leave the
14 spot that you marked your initials "CE"?

15 A. Yes.

16 Q. And what did you do when you left that spot?

17 A. We began to set up a perimeter around the
18 demonstration.

19 Q. Who is "we"?

20 A. Me, the other U.S. Park Police officers,
21 some Secret Service officers, and U.S. Park Police
22 SWAT officers.

23 Q. And how did you set up the perimeter?

24 A. With black fence and police tape.

25 Q. What color is the police tape?

1 A. Yellow.

2 Q. And after that was done, where did you go?
3 What area did you go to?

4 A. I was on the opposite side -- I was here, to
5 this side where the wagons and police vehicles were
6 parked, U.S. Park Police vehicles were parked.

7 MS. GEORGE: Court's indulgence.

8 (Pause.)

9 MS. GEORGE: For the record, Officer Easter
10 pointed to the area on Pennsylvania Avenue where the
11 "N" and "U" and the word "avenue" on the exhibit
12 actually are next to each other.

13 THE COURT: Okay.

14 BY MS. GEORGE:

15 Q. After you stayed there, at some point in
16 time -- let me ask you this: Were individuals that
17 stood up on the -- on the ledge of the White House
18 fence, were they arrested at some point later?

19 A. Yes, ma'am.

20 Q. And did you actually have an opportunity to
21 actually go to the front of the fence where they were
22 standing on the ledge?

23 A. Yes, ma'am.

24 Q. And did you actually assist in the removal
25 and arrest of some individuals from that ledge?

1 A. Yes, ma'am.

2 Q. And at the time you went to the ledge, were
3 you able to actually see the front part of the
4 individuals that were standing on the ledge, the front
5 parts of their body?

6 A. Yes, ma'am.

7 Q. Were you actually able to see their faces?

8 A. Yes, ma'am.

9 Q. And at this point in time do you see anyone
10 in the courtroom that was actually standing on the
11 ledge?

12 A. Yes, ma'am.

13 Q. Would you please point to where that person
14 is and describe where that person is seated or anybody
15 else in the courtroom that was on the ledge.

16 A. The Defendant (indicating).

17 MR. FELDMAN: Indicating the Defendant, my
18 client, Your Honor.

19 THE WITNESS: The gentleman in the military
20 uniform.

21 THE COURT: All right.

22 BY MS. GEORGE:

23 Q. The gentleman you just pointed to, was that
24 person also in the group that came walking south
25 through Lafayette Park until they reached the ledge of

1 the White House fence?

2 A. I don't remember.

3 MS. GEORGE: Court's indulgence.

4 (Pause.)

5 BY MS. GEORGE:

6 Q. Now, you indicated that members of this
7 group were chanting and you also later indicated that
8 the individuals on the ledge were also saying
9 something; is that correct?

10 A. Yes, ma'am.

11 Q. Was there anyone out there with a bullhorn?

12 A. Yes, ma'am.

13 Q. Would you please describe, if you can
14 recall, how that person was dressed?

15 A. He was wearing a military uniform as well.
16 He was wearing camouflage, military camouflage pants
17 and shirt and a beret.

18 Q. Do you recall whether or not this individual
19 was saying anything with the bullhorn?

20 A. Yes. He was saying stuff with the bullhorn,
21 but I don't remember exactly what he was saying. He
22 was leading the chants. He would say something and
23 the crowd, the protesters would respond.

24 Q. When you say "protesters," are you referring
25 to the individuals that were walking in the southerly

1 direction across Lafayette State Park?

2 A. Well, yes, once they got to the fence.

3 MR. FELDMAN: Your Honor, no objection.
4 Government Exhibit 3 and 2 admitted into evidence,
5 Your Honor.

6 MS. GEORGE: No, 31 and 32.

7 THE COURT: You are offering 31 and 32?

8 MS. GEORGE: Yes, Your Honor.

9 THE COURT: Without objection, they are
10 admitted.

11 (Government's Exhibit Numbers 31 and
12 32, previously marked for
13 identification, were received in
14 evidence.)

15 BY MS. GEORGE:

16 Q. Officer, is the screen on your stand lit?

17 A. Yes, ma'am.

18 MS. GEORGE: Your Honor, for purposes of
19 clarity, I would actually like to submit the exhibits.

20 THE COURT: Yes. It's been admitted.

21 Madam Clerk, is mine on as well?

22 MS. GEORGE: Court's indulgence.

23 (Pause.)

24 BY MS. GEORGE:

25 Q. Officer Easter, showing you what's been

1 marked as Government Exhibit 32 and admitted as that
2 exhibit, do you recognize the area -- let me just ask
3 it this way: Does the area that you talked about
4 previously fairly depict the area that you observed
5 when the individuals were on the ledge of the fence?

6 A. Yes, ma'am.

7 Q. Showing you marked and what's been placed on
8 the Elmo as Government Exhibit Number 31.

9 THE COURT: Please adjust it. I can't see.

10 MS. GEORGE: Yes, Your Honor. Is that
11 better?

12 THE COURT: Yep. Thank you.

13 BY MS. GEORGE:

14 Q. Does Government Exhibit Number 31 also
15 fairly and accurately depict the area you just
16 described in your testimony --

17 MR. FELDMAN: Your Honor, they are in
18 evidence.

19 THE COURT: That's all right. She has to
20 lay a foundation for them. I just want to know
21 what --

22 THE WITNESS: Yes, ma'am.

23 THE COURT: So this is what you were looking
24 at that morning?

25 THE WITNESS: Yes, sir.

1 THE COURT: That afternoon, excuse me. And
2 these are the military uniforms to which you were
3 referring?

4 THE WITNESS: Yes, sir.

5 THE COURT: Thank you.

6 MS. GEORGE: No further questions at this
7 time, Your Honor, of Officer Easter.

8 THE COURT: Cross-examine.

9 MR. FELDMAN: No, Your Honor.

10 THE COURT: No cross-examination?

11 MR. FELDMAN: No, Your Honor.

12 THE COURT: You may step down. Thank you.
13 Call your next witness.

14 MS. GEORGE: The government calls Park
15 Ranger Amy Dailey to the stand.

16 THE COURT: Ranger Dailey, please.

17 MS. GEORGE: Your Honor, may I speak to
18 defense counsel for a moment?

19 THE COURT: Of course.

20 (Whereupon, a discussion was held off the
21 record.)

22 AMY DAILEY,
23 a witness produced on call of the Government, having
24 first been duly sworn, was examined and testified as
25 follows:

1 DIRECT EXAMINATION

2 BY MS. GEORGE:

3 Q. Ma'am, would you please state your name for
4 the record, spelling your first and last name.

5 A. Amy, A-M-Y, Dailey, D-A-I-L-E-Y.

6 Q. And, Miss Dailey, if you are having trouble
7 actually seeing Government Exhibit Number 1, we could
8 move it closer when I start asking you questions.9 Could you please tell the Court where you
10 work?

11 A. I work for the National Park Service.

12 Q. And how long have you worked for the
13 National Park Service?

14 A. Twenty-four years.

15 Q. Do you have a title?

16 A. Park ranger.

17 Q. And could you please tell the Court what are
18 your general duties as a park ranger for the National
19 Park Service?20 A. I basically help determine conditions for
21 people that have permits for demonstrations, special
22 events, or filmings that take place in our park.23 Q. And could you please tell the Court the
24 specific office that you are assigned to the National
25 Park Service?

1 A. President's Park, or the White House
2 visitor's center.

3 Q. And what is President's Park associated with
4 within the National Park Service?

5 A. President's Park encompasses the Ellipse,
6 Lafayette Park, and the ground of the White House,
7 first division and Sherman division memorials.

8 Q. And what are the National Park Service's
9 relationship to that particular area that you just
10 described?

11 A. The White House is just one unit of the
12 national park system, and that is why we're there.

13 Q. And, specifically, what are your duties in
14 addition to what you've already explained with regard
15 to the permits?

16 A. In regards to the permits?

17 Q. Yes.

18 A. I basically will prepare a report for my
19 bosses of activities that take place in our park on a
20 weekly basis so that maintenance as well as senior
21 management would be able to plan their work schedules
22 appropriately.

23 Q. And are you aware of the Federal statute
24 that indicates to you which individuals can seek
25 permits for which areas?

1 A. Yes, ma'am.

2 Q. What is it?

3 A. 36 CFR 7.96.

4 Q. And are you intimately familiar with the
5 details of that particular statute?

6 A. I believe I am, yes.

7 Q. And could you please tell the Court what
8 other agencies or units within the park service here
9 in Washington, D.C. you coordinate with to determine
10 whether a group or an individual has actually received
11 a permit for any of those areas that you just
12 mentioned?

13 A. We work closely with the United States Park
14 Police, as well as the division of park programs,
15 which is responsible for issuing the actual permits.

16 Q. Based upon your duties and your office, how
17 closely do you work with the office that actually
18 issues the permits?

19 A. I would say very closely, because we're in
20 constant communication whether or not an area is
21 available, whether there's instruction going on,
22 whether we're doing routine maintenance, those types
23 of things. So it's constantly letting them know what
24 areas are available.

25 Q. And does an individual or group submit a

1 request for permit for your office or other programs?

2 A. No. They submit it to the division of park
3 programs.

4 Q. Division of park programs. Do you, in
5 exercising your duties, actually communicate with them
6 and actually see the actual permits that are submitted
7 by individuals and groups?

8 A. They fax me over a copy of the permits --
9 applications, rather.

10 Q. And do you actually see the permits along
11 with the applications?

12 A. Yes, ma'am.

13 Q. And do you prepare any reports or
14 documentation in relationship to that original
15 information that you receive from the division of park
16 programs?

17 A. Yes, ma'am. I am responsible for providing
18 a report on a weekly basis to our senior management
19 team of those activities. I am responsible for
20 submitting it on a Wednesday from -- to cover a period
21 of Thursday to Thursday of any permits that had been
22 issued, or any that are pending.

23 Q. And do you actually save those reports?

24 A. Yes, ma'am. We are now starting to require
25 that we have to, yes.

1 MR. FELDMAN: Objection. Nonresponsive.

2 THE COURT: No, I don't think so.

3 Overruled.

4 BY MS. GEORGE:

5 Q. Did you have an opportunity, Park Ranger
6 Dailey, to actually be in the area of the White House
7 sidewalk on November 15th, 2010?

8 A. Yes, ma'am.

9 Q. And did you actually have an opportunity, in
10 preparation for your testimony today, to review a
11 video that depicts the events on November 15, 2010?

12 A. Yes, ma'am, I did.

13 Q. And did you actually see yourself in that
14 video?

15 A. Yes, I did.

16 Q. And did you have an opportunity to initial
17 and date a copy of that video?

18 A. Yes, ma'am.

19 Q. And could you please tell the Court whether
20 or not any individual or group actually had a permit
21 to conduct a demonstration or protest on the White
22 House sidewalk on November 15, 2010?

23 A. Not on the White House sidewalk, no.

24 Q. And did any individual or group have a
25 permit for the White House park area that day?

1 A. There was a group that had a permit for the
2 south west quadrant of Lafayette Park.

3 Q. Was that the only permit that was issued on
4 November 15, 2010 for the White House park area?

5 A. Yes, ma'am.

6 MS. GEORGE: Court's indulgence.

7 (Pause.)

8 (Government's Exhibit Number 2 was
9 marked for identification.)

10 MS. GEORGE: Your Honor, Government's
11 Exhibit Number 2 was previously given to defense
12 counsel -- well, Mr. Choi's former defense counsel
13 approximately a month ago, and I believe Mr. Feldman
14 has actually seen it. It was transferred to him, and
15 he has actually seen it.

16 MR. FELDMAN: I have no objection to its
17 admission, Your Honor.

18 (Government's Exhibit Number 2,
19 previously marked for
20 identification, was received in
21 evidence.)

22 THE COURT: You may play it.

23 MS. GEORGE: I just want her to identify it.

24 MR. FELDMAN: Is that exhibit number --

25 MS. GEORGE: Number 2.

1 MR. FELDMAN: -- in evidence?

2 THE COURT: It's admitted now without
3 objection.

4 BY MS. GEORGE:

5 Q. Park Ranger Dailey, could you indicate what
6 initial you placed on Exhibit Number 2?

7 A. AD, 8/29/11.

8 Q. That's today's date. Did you also have an
9 opportunity to watch that video prior to today?

10 A. Yes, ma'am.

11 Q. And do you recall, specifically, why you
12 were at the White House sidewalk on November 15, 2010?

13 A. I had gone up to check on the status of the
14 permitted group that was in Lafayette Park.

15 Q. And what, if anything, do you observe
16 remembering, and how long did you stay up there?

17 A. I remember not a lot, to be honest, but I do
18 remember that there was an incident where the park
19 police had to shut down the White House sidewalk area
20 and move people from that area into Lafayette Park,
21 and then I had to walk through Lafayette Park to get
22 my co-workers so we can vacate the area and get back
23 to the office.

24 Q. On the video, was your hair different than
25 it is today?

1 A. Yes, ma'am.

2 Q. Could you please describe how it was?

3 A. It was probably a little more redder, and
4 down instead of up.

5 Q. And how long is your hair?

6 A. It's just past my shoulders.

7 Q. And was it past your shoulders on that day?

8 A. I believe so, yes, ma'am.

9 Q. And how were you dressed on November 15,
10 2010?

11 A. I would have had my winter uniform on, which
12 is a long sleeve shirt and probably a jacket.

13 Q. And as a park service ranger, do you have
14 any arrest powers?

15 A. No, ma'am, I do not.

16 Q. And were there any other rangers with you on
17 that day?

18 A. There were. There were two. I do remember
19 the name of the one individual, but not the other.

20 Q. And what were you doing with them?

21 A. The one ranger that I do remember, they were
22 up there because they were brand new to our park and
23 were trying to get familiar with the areas that we're
24 responsible for.

25 MS. GEORGE: No further questions at this

1 time, Your Honor.

2 MR. FELDMAN: May I briefly?

3 THE COURT: Were you going to show the
4 video?

5 MS. GEORGE: I will, Your Honor, at this
6 time, if the Court wishes.

7 THE COURT: It's up to you. It's your case.

8 MS. GEORGE: I can have Miss Dailey point
9 out where she is in the video.

10 MR. FELDMAN: Your Honor, before that, may I
11 ask one question, two questions?

12 THE COURT: Of course, you can.

13 MR. FELDMAN: Thank you, Judge.

14 THE COURT: You're welcome.

15 CROSS-EXAMINATION

16 BY MR. FELDMAN:

17 Q. Good morning. How are you?

18 A. How are you?

19 Q. My name is Robert Feldman. I represent
20 Lieutenant Dan Choi.

21 The other group, do you remember the name of
22 the other group that you got the permit for?

23 A. Not off the back of my hand, sir. No, I do
24 not.

25 Q. Is it the fact -- isn't a fact that you --

1 part of your duties is to determine whether they are
2 allowed to use amplifiers, the group that got the
3 permit?

4 MS. GEORGE: Objection. Relevancy.

5 THE COURT: Overruled. This other group, we
6 heard reference to a bullhorn.

7 Counsel, your question is?

8 BY MR. FELDMAN:

9 Q. The other group that had the permit, did
10 they have electronic or electric amplifier?

11 A. I wanna say they may have had a bullhorn.
12 Those are conditions that are set when the permit is
13 issued. But what they brought in -- and that was my
14 concern, was that they were bringing things into the
15 park that wasn't necessarily in the permit.

16 Q. The other group?

17 A. Yes, sir. Yes, sir.

18 Q. Okay. Forget about electronic, forget about
19 bullhorn. It was loud? They were loud, the other
20 group, correct?

21 A. Not that I can remember, but...

22 Q. Isn't it a fact, madam, that the other group
23 was louder than the group that the Defendant was
24 standing in, the people, the anti-don't-ask-don't-tell
25 people?

1 A. Not that I recall, no.

2 Q. Well, is it that you don't recall, or was
3 there just cacophony? That means loud noise.

4 A. The group was conducting a hunger strike, so
5 they were basically just sitting there. I don't
6 recall whether they, at the time, was conducting any
7 speeches or chanting, which would have necessitated
8 the use of a bullhorn.

9 Q. Okay. But my group, my client's group --
10 you know what I'm talking about, right?

11 A. Yes, sir.

12 Q. Okay. They were making some noise, too,
13 right?

14 A. Not that I recall. Like I said, sir, I
15 don't recall.

16 Q. Well, all right. All right. You said there
17 was a bullhorn. Do you remember if one of my group,
18 the anti-DADT people, or the other people were using
19 the bullhorn?

20 MS. GEORGE: Your Honor, assumes facts not
21 in evidence.

22 THE COURT: I'll overrule that. Let me --
23 maybe I'm the guy that caused this here. But a
24 previous officer had a recollection of an amplified
25 voice. Do you have any recollection of anybody you

1 saw that morning amplifying his or her voice with some
2 electronic instrument called a bullhorn or anything
3 else?

4 THE WITNESS: No. The only amplified sound,
5 I believe, that would have be done would have been by
6 the United States Park Police.

7 BY MR. FELDMAN:

8 Q. So you are swearing under oath that the only
9 hearable or audible noise was the stuff, the noise,
10 the sounds coming from the police; yes or no? Is that
11 your testimony under oath; yes or no?

12 A. I don't recall. I mean, I'm saying if I
13 heard a voice it would have been the United States
14 Park Police, yes.

15 Q. So you say if you heard a voice. You can't
16 state with any degree of certainty, certainly not
17 beyond a reasonable doubt, that you heard nothing; yes
18 or no?

19 A. That's correct.

20 MR. FELDMAN: Thank you.

21 THE COURT: Any redirect?

22 MS. GEORGE: Yes.

23 REDIRECT EXAMINATION

24 BY MS. GEORGE:

25 Q. Miss Dailey, do you know if, in fact,

1 whether your office or the division of park programs
2 authorized the other group that you say was in the
3 west area of Lafayette Park to use a bullhorn?

4 A. I wanna say I believe that they were using a
5 bullhorn to amplify sound. If they were making
6 speeches, I wasn't up there the entire time the group
7 was in the park, so I could not say for a fact.

8 Q. My question is this: Does your agency, your
9 office have to approve the use of a bullhorn?

10 MR. FELDMAN: Asked and answered, Your
11 Honor.

12 THE COURT: Overruled.

13 Do you have to approve the use of a
14 bullhorn?

15 THE WITNESS: We would like to know what is
16 coming into the park so it is included in the permit
17 so that everybody understands what is coming into the
18 area.

19 MR. FELDMAN: Objection. Not responsive.

20 THE COURT: Overruled.

21 But you don't have a specific recollection
22 of the permit that these other people on the southwest
23 side, whether or not the permit spoke to a bullhorn,
24 right?

25 THE WITNESS: No, sir.

1 THE COURT: All right, let's go on to
2 something else.

3 MR. FELDMAN: Thank you.

4 MS. GEORGE: That's fine. No further
5 questions.

6 THE COURT: All right.

7 MS. GEORGE: One second, I do want to
8 identify an exhibit before she leaves.

9 BY MS. GEORGE:

10 Q. Earlier, Miss Dailey, you testified
11 regarding a report that you typically prepared --

12 MR. FELDMAN: Beyond the scope of cross.

13 THE COURT: I'll permit her to reopen the
14 questioning. I'll permit you to cross-examine if you
15 need to.

16 BY MS. GEORGE:

17 Q. You indicated you prepare reports with
18 regard to the permits on the day that you go up to the
19 area; is that correct?

20 A. Yes, ma'am.

21 Q. Did you, in fact, prepare a report in
22 reference to November 15, 2010?

23 A. For the week prior to, yes.

24 Q. And did that report include information
25 regarding the permits on November 15, 2010?

1 A. It would've said in the future that those
2 groups were coming, yes.

3 MR. FELDMAN: Judge, that's nonresponsive,
4 "it would've said." Did it say?

5 THE COURT: Why don't you show her the
6 report, please?

7 MS. GEORGE: Certainly, Your Honor. I want
8 to show defense a copy and provide him with a copy of
9 the report. It's marked Government Exhibit Number 4.

10 (Government's Exhibit Number 4 was
11 marked for identification.)

12 MS. GEORGE: Your Honor, I'm going to place
13 on the Elmo the front copy of the report. It's
14 actually three pages.

15 MR. FELDMAN: Your Honor.

16 THE COURT: Yes, sir.

17 MR. FELDMAN: I don't know if I'm out of
18 order here, but I've just been handed a report that
19 doesn't include the 15th.

20 MS. GEORGE: Well, it does.

21 Let me just ask the witness.

22 BY MS. GEORGE:

23 Q. Miss Daily, is Government's Exhibit Number 4
24 the report you just testified about?

25 A. Yes, ma'am.

1 Q. And could you please explain whether -- tell
2 me, first, how many pages Government Exhibit Number 4
3 is.

4 A. Three pages. Three pages.

5 Q. Is that a fair and accurate copy of the
6 report that you just described in your testimony?

7 A. Yes, ma'am.

8 Q. And does Government Exhibit Number 4 have
9 information in reference to November 15th, 2010?

10 A. On the very last page where it says
11 "important notes," it would've said November 15th
12 through 17th of 2010 that there was a demonstration at
13 Lafayette Park from 8 a.m. to 8 p.m. with an estimated
14 fifty participants, but that the actual permit hadn't
15 been issued yet.

16 Q. And did you use the information from the
17 division of park programs to actually compile the
18 information in Government Exhibit Number 4?

19 A. Yes, ma'am.

20 MS. GEORGE: Your Honor, at this time the
21 government would move to admit into evidence
22 Government Exhibit Number 4.

23 MR. FELDMAN: May I voir dire, Judge?

24 THE COURT: Sure.

25 VOIR DIRE EXAMINATION

1 BY MR. FELDMAN:

2 Q. Well, first of all, on the third page that
3 Miss George referred to, where it says November 15th
4 to the 17th, 2010, demonstration in Lafayette Park
5 from 8 a.m. to 6 p.m. daily, estimated fifty
6 participants. Note, in very dark letters, "actual
7 permit not yet issued." Do you know if that
8 notation -- which is the last bullet point on the
9 third page -- refers to the group of the people that
10 had the permit, or my group, the DADT people; if you
11 know?

12 A. No, I do not know.

13 MR. FELDMAN: I object to its admittance for
14 relevance.

15 THE COURT: Overruled. It will be admitted.

16 (Government's Exhibit Number 4,
17 previously marked for
18 identification, was received in
19 evidence.)

20 THE COURT: Are we finished with the --

21 MS. GEORGE: Just one follow-up question,
22 Your Honor.

23 DIRECT EXAMINATION (Cont'd)

24 BY MS. GEORGE:

25 Q. Government Exhibit 4, the fourth bullet

1 point, that's in reference to Lafayette Park and not
2 the White House sidewalk, correct?

3 A. Correct.

4 MS. GEORGE: No further questions.

5 I may not have heard, but did the Court
6 admit Exhibit Number 4.

7 THE COURT: Over the objection of defense.

8 MR. FELDMAN: Just for the record, there is
9 no foundation laid.

10 THE COURT: The objection is overruled.
11 Go ahead, Miss George.

12 MS. GEORGE: Your Honor, can I play the
13 video -- I can do it through the next witness.

14 The government will call Lieutenant
15 LaChance.

16 THE COURT: It's up to you. You are
17 presenting your case. If you want to show the video,
18 go ahead. If you --

19 MS. GEORGE: I will show the video through
20 Lieutenant LaChance.

21 THE COURT: Okay. This is the lieutenant.

22 MR. FELDMAN: I would like to beg the
23 Court's indulgence. May I have a five-minute body
24 break?

25 THE COURT: I have to take a conference call

1 at 11:15, then we'll go to 12:30 for lunch. If you
2 need two minutes, go ahead.

3 (Whereupon, at 10:31 a.m. a recess was
4 taken, and at 10:35 a.m. the following
5 ensued:)

6 THE COURT: Are we ready?

7 MS. GEORGE: Yes, Your Honor. The
8 government calls Robert LaChance.

9 THE COURT: Please come up, lieutenant.

10 ROBERT LaCHANCE,
11 a witness produced on call of the Government, having
12 first been duly sworn, was examined and testified as
13 follows:

14 DIRECT EXAMINATION

15 BY MS. GEORGE:

16 Q. Sir, please state your full name for the
17 record, spelling your first and last name.

18 A. Robert LaChance, R-O-B-E-R-T
19 L-A-C-H-A-N-C-E.

20 Q. Where do you work?

21 A. For the United States Park Police.

22 Q. Are you a law enforcement officer with that
23 agency?

24 A. Yes.

25 Q. What's your current rank?

1 A. Lieutenant.

2 Q. How long have you worked with the U.S. Park
3 Police?

4 A. Twelve years.

5 Q. And how long have you been a lieutenant?

6 A. Almost three.

7 Q. And could you please give the Court some
8 sense of your experience with the U.S. Park Police;
9 for example, where did you start off as an officer
10 with them, how did you end up being a lieutenant?

11 A. Yes, ma'am. I started out like everyone
12 else, going to the Federal law enforcement center for
13 basic training. I got out, did my field training on
14 the street. And I was a patrol officer on midnights
15 in our District 5 station for a few years. After I
16 did that, I was selected for SWAT as an officer. I
17 spent a couple of years as a SWAT officer. Then I was
18 promoted to sergeant, went up to the Rock Creek
19 station, which is District 3. Spent a few years as a
20 sergeant in Rock Creek, and then I had an opportunity
21 to be a public information officer for the forest and
22 worked directly for the chief. I did that for a few
23 years, and then I was promoted to lieutenant. Went to
24 the entry level lieutenant position, which is a shift
25 commander's office where you cover the operational

1 units on the street on a daily basis. And then from
2 there I'm in my current position as a commander of our
3 SWAT, our K-9, and our armor guard units.

4 Q. Just for the record, what does SWAT stand
5 for?

6 A. Special weapons and tactics.

7 Q. Can you please give the Court a sense of the
8 hierarchy of the law enforcement official in the park
9 police?

10 You mentioned the term such as lieutenants,
11 shift commanders. Can you explain just quickly how --

12 A. Yes, ma'am. When you come on the job,
13 you're an officer. From officer, you can only go to
14 sergeant is the next rank, and sergeants are in charge
15 of officers. And then from there you can become a
16 lieutenant where you have command, there's the first
17 command level position, and then from there you go to
18 captain, and then major, and there's deputy chiefs,
19 and assistant chief, and the chief of police.

20 Q. Okay. I think you indicated that you were
21 an area shift commander; is that correct?

22 A. Yes. I did do time as a shift commander
23 when I first became a lieutenant.

24 Q. And is there a term called the watch
25 commander that the U.S. Park Police uses?

1 A. Yes, ma'am.

2 Q. And could you please explain what the watch
3 commander is, and who the watch commander is
4 responsible for supervising?

5 A. The watch commander is currently captain
6 level. They are in charge of the shift commander's
7 office, they are also in charge of our horse mount
8 unit, and our guard force, and traffic safety unit.

9 Q. Does park police have shift commanders for
10 different purposes?

11 A. No. The shift commanders, like I said, is
12 an entry level lieutenant position. Before you are
13 given command, they give you experience actually
14 running the street and learning just how to -- how to
15 command in smaller instances on live incidents, and
16 then from there you do your time there, and they give
17 you command of the unit.

18 Q. I would like to direct your attention to
19 November 15, 2010. Could you please tell the Court
20 whether you were actually the shift commander on that
21 day?

22 A. No. I was a SWAT commander on that day.

23 MR. FELDMAN: I'm sorry, I was a what?

24 THE COURT: SWAT commander.

25 MR. FELDMAN: Thank you, Judge.

1 BY MS. GEORGE:

2 Q. Were you in charge of the entire SWAT unit
3 that was working on --

4 A. Yes.

5 Q. Can you tell the Court whether there was a
6 watch commander on duty?

7 MR. FELDMAN: Leading. Leading.

8 THE COURT: Tell us about the command
9 structure that day. Were you at the top of the
10 command?

11 THE WITNESS: Well, I was in charge of the
12 incident at the White House. I was the -- but there
13 is also a watch commander who is a captain.

14 THE COURT: To whom you report?

15 THE WITNESS: That I would report.

16 THE COURT: Go ahead, let's proceed.

17 BY MS. GEORGE:

18 Q. Could you please tell the Court who your
19 supervisors were that day?

20 A. I believe it was Captain Beck.

21 MR. FELDMAN: Again, just for the record, I
22 don't know -- I could be wrong -- did he refer to some
23 notes? I can't --

24 THE WITNESS: No, I didn't, sir. I have
25 nothing in front of me, nothing in my hands.

1 MR. FELDMAN: I'm sorry, Judge.

2 THE COURT: Nothing up your sleeves? No
3 rabbits in your hat?

4 THE WITNESS: No.

5 THE COURT: Proceed.

6 MS. GEORGE: Did you receive information
7 that there was going to be a demonstration at the
8 White House on that day?

9 THE WITNESS: Yes, ma'am.

10 BY MS. GEORGE:

11 Q. Without telling us the specifics of that
12 information, could you please tell the Court how you
13 received that information?

14 A. I was originally notified by e-mail.

15 Q. Did you have any conversations with Captain
16 Beck or any other supervisor in reference to that
17 demonstration?

18 A. Yes.

19 Q. And prior to November 15th, did you receive
20 any information from any other law enforcement
21 agencies about the demonstration on November 15?

22 A. Yes.

23 Q. And did you -- which agency was that?

24 A. It was the e-mail that was forwarded to me
25 from the Secret Service.

1 Q. And did you receive any details, for
2 instance, about how many people --

3 MR. FELDMAN: Judge, who's testifying?

4 MS. GEORGE: Your Honor, it's entered for
5 course of conduct, and that's why I'm just trying --

6 THE COURT: Objection overruled. Let's get
7 going. Say your question again.

8 BY MS. GEORGE:

9 Q. Lieutenant LaChance, would you please tell
10 the Court what information was provided? Without
11 talking about the subject matter of the demonstration,
12 what information was given to you about the nature of
13 the demonstration?

14 MR. FELDMAN: Leading at worst; inartful at
15 best. I would ask to rephrase it.

16 THE COURT: Were there discussions about
17 what was going to happen? Just yes or no. Were there
18 discussions about what was going to happen,
19 potentially going to happen at the White House that
20 day to which you were a party?

21 THE WITNESS: Yes, sir.

22 THE COURT: Did it take place among the
23 command structure of the U.S. Park Police?

24 THE WITNESS: Yes, sir.

25 THE COURT: So you were aware something was

1 going to happen?

2 THE WITNESS: Yes, sir.

3 THE COURT: That's fine. Let's proceed.

4 BY MS. GEORGE:

5 Q. What details did they provide without
6 stating the subject matter of the demonstration, if
7 any?

8 A. I'm not sure how to answer that.

9 Q. Well --

10 A. You don't want me to provide detail, I'm
11 sorry.

12 Q. What specifics were you given about the
13 demonstration?

14 MR. FELDMAN: Again, give the officer a
15 chance, as far as I know who is not a lawyer, who
16 knows the way the question was worded is impossible.
17 I object.

18 THE COURT: We'll strike the question.
19 Let's see if we can approach it in this fashion.

20 Is it in the ordinary practice of U.S. Park
21 Police to have a briefing --

22 THE WITNESS: Yes.

23 THE COURT: -- when there's potential of
24 some disruption at the White House?

25 THE WITNESS: Yes, sir.

1 THE COURT: Did such a briefing occur?

2 THE WITNESS: Yes, sir.

3 BY MS. GEORGE:

4 Q. In reference to the demonstration that took
5 place that day?

6 A. Yes, sir.

7 THE COURT: Thank you.

8 BY MS. GEORGE:

9 Q. And what specifics were given about the
10 nature of the demonstration without talking about the
11 subject matter of the demonstration?

12 A. That there were people who were going to
13 chain themselves to the White House fence.

14 MR. FELDMAN: Objection. Move to strike.

15 THE COURT: Overruled.

16 BY MS. GEORGE:

17 Q. Were you given any other information about
18 the amount of people that would be at the White House
19 sidewalk?

20 MR. FELDMAN: Objection. Hearsay. Naked
21 hearsay.

22 THE COURT: Sustained.

23 MS. GEORGE: Your Honor, it's offered for
24 the course of conduct.

25 THE COURT: It's still hearsay. Sustained.

1 MS. GEORGE: But the rules of evidence allow
2 it in for that purpose.

3 THE COURT: We disagree. Sustained.

4 BY MS. GEORGE:

5 Q. After receiving that information, did you go
6 to the White House sidewalk?

7 MR. FELDMAN: Leading.

8 THE COURT: Overruled.

9 THE WITNESS: Yes.

10 BY MS. GEORGE:

11 Q. And why did you report to the White House
12 sidewalk on November 15, 2010?

13 A. Because I was given information, and I was
14 told that I was ordered to go to the White House
15 sidewalk for this demonstration that we were given
16 information on.

17 THE COURT: So it was not a surprise? You
18 knew something was coming?

19 THE WITNESS: Yes, sir.

20 THE COURT: Thank you.

21 BY MS. GEORGE:

22 Q. Approximately what time did you arrive at
23 the White House sidewalk, Lieutenant LaChance?

24 A. It was afternoon, early afternoon.

25 Q. And when you say "early afternoon," would

1 you give the Court some span of time frame?

2 A. It was before 1400.

3 Q. Okay. And what, if anything, was going on
4 when you arrived at the White House sidewalk at that
5 point in time?

6 A. There was a demonstration taking place.

7 Q. And would you please describe what
8 specifically you observed? You say it was a
9 demonstration? What did you see?

10 A. Individuals on the White House sidewalk that
11 were surrounded by another crowd of people that were
12 on-looking and recording the demonstration.

13 Q. And you described individuals on the White
14 House sidewalk that was surrounded by onlookers. Can
15 you describe those individuals?

16 A. Yes. It was thirteen individuals that were
17 on the ledge of the White House sidewalk, and there
18 was a crowd of people surrounding them.

19 Q. Now, does the United States Park Police have
20 a procedure that it employs when it learns that
21 there's going to be a demonstration at the White House
22 sidewalk?

23 A. Yes. There's a procedure that we follow.

24 Q. And what term do you use to describe that
25 procedure?

1 A. Well, it was mass arrest. I think we're
2 changing the language to high volume arrest.

3 Q. But at the time on November 15, 2010, were
4 you using mass arrest?

5 A. Yes.

6 Q. And would you please --

7 MR. FELDMAN: I'm having a problem.
8 Everybody's talking really fast. A little slower,
9 please.

10 THE COURT: Okay. Please slow down.

11 THE WITNESS: Yes, sir.

12 THE COURT: Thank you.

13 BY MS. GEORGE:

14 Q. Lieutenant LaChance, would you please
15 describe for the Court what was entailed in the mass
16 arrest procedure?

17 A. It's basically the procedures for if we have
18 a group of demonstrators that are committing civil
19 disobedience and how to safely arrest them and remove
20 them from the White House area so the area can be
21 opened back up to the general public.

22 Q. Now, you said a group of individuals. Do
23 you apply this procedure if it's just one person?

24 A. Yes.

25 Q. And when you report to the White House

1 sidewalk as a law enforcement officer with the park
2 police, what are your concerns and goals in
3 effectuating the mass arrest process?

4 MR. FELDMAN: In general, or on this day?

5 THE COURT: In general. I'll hear it in
6 general. Go ahead, what are you trying to accomplish?

7 THE WITNESS: In general, the safety of both
8 the occupants of the White House, the President's
9 Park, also the visitors that come to see the White
10 House and the area. And this is also to ensure that
11 everyone who comes has the opportunity to come stand
12 on the White House sidewalk and get that postcard
13 picture of the White House in the background with
14 them.

15 BY MS. GEORGE:

16 Q. Are you also concerned about the safety of
17 the demonstrators protesting?

18 MR. FELDMAN: Leading.

19 THE COURT: Sustained.

20 BY MS. GEORGE:

21 Q. Are there other individuals' safety that you
22 are concerned about other than the individuals you
23 mentioned?

24 A. Yes. I consider demonstrators also visitors
25 to the White House also. Everyone that comes to the

1 White House is visiting the area, so...

2 MS. GEORGE: Court's indulgence.

3 (Pause.)

4 BY MS. GEORGE:

5 Q. Would you please explain to the Court which
6 sections or divisions are actually involved in the
7 mass arrest process?

8 A. There is several. There is our special
9 force, which consists of the SWAT, K-9, our motors,
10 and also our criminal investigation branch, which is
11 our detectives and our identification unit. And also
12 we have the District 1 patrol officers that come to
13 provide support, and then also the District 5 that
14 provide the processing area for the mass arrest.

15 Q. And could you please tell the Court,
16 specifically, is there a predetermined plan that's
17 included in this mass arrest process?

18 A. Yes.

19 Q. Please describe it.

20 A. The plan for dealing with a demonstration or
21 planned civil disobedience and arrest is once the
22 group commits some civil disobedience, then at that
23 point we move to close the White House sidewalk, and
24 we move everyone who -- we move everyone except for
25 the group that's intent on being arrested into

1 Lafayette Park. We set up an interim perimeter with
2 bike rack and also with police line tape.

3 Q. And where is that police line tape connected
4 to?

5 A. It's connected to the fence, the lamppost,
6 to the bike rack.

7 Q. And you mentioned, before you continue, that
8 when you're aware that civil disobedience is going to
9 occur -- from the park police perspective, what is
10 civil disobedience?

11 A. Committing an act that is against the
12 regulations for that area at the White House sidewalk.

13 Q. Okay. Please continue on about the mass
14 arrest process after the setting up of the yellow
15 police line.

16 A. Well, once the area has been cleared out of
17 everyone except the group that's intent on committing
18 the civil disobedience, then we have the area secure.
19 I place the arresting officers next to the group
20 that's going to be arrested or risk arrest, and then I
21 will read warnings to them.

22 Q. What's the purpose of putting those officers
23 next to the group that may be arrested?

24 A. I place the officers there so that way I
25 know that at least the arresting officers can hear me

1 and understand what I was saying.

2 Q. And in dispersing individuals from the area
3 of the White House sidewalk, are there designated
4 sections for certain types of people?

5 A. Yes, there is.

6 Q. Could you please describe that for the
7 Court.

8 A. We have two different areas. We have one
9 area is we push people into Lafayette Park that are
10 bystanders or may be part of the organization or group
11 that's there so they are in Lafayette Park, and
12 credentialed media to allow to them to stay on the
13 west end of the White House sidewalk to videotape and
14 have access, media access to the incident.

15 Q. And are those areas you just described, are
16 they outside the yellow line perimeter?

17 A. Yes, both of those areas are outside of the
18 inner perimeter.

19 Q. And why is it that the park police moves
20 those individuals outside of the yellow police line?

21 MR. FELDMAN: Is this all their practice? I
22 object to, like, the whole procedure. Can we go to,
23 like, what happened?

24 THE COURT: She is permitted to lay a
25 foundation.

1 So the perimeter is now established on the
2 other side, the media on one side and people on
3 Lafayette Park, right?

4 THE WITNESS: Yes, sir.

5 THE COURT: Your next question is?

6 BY MS. GEORGE:

7 Q. Why do they move those individuals out of
8 the area that's on the inside of the perimeter?

9 MR. FELDMAN: In general it's totally
10 irrelevant, Judge.

11 THE COURT: It might bear on the legitimacy
12 of the warning he's about to give. Let me hear.
13 Overruled.

14 Please answer the question.

15 THE WITNESS: Yes, sir. We close the area
16 for the safety of the police officers and the people
17 that are working that area to make sure that -- to
18 make sure that people don't come up behind us and
19 surprise us, or we're not caught off guard. So we
20 need a secured area to work.

21 BY MS. GEORGE:

22 Q. Does the park police have any other officers
23 securing the perimeter?

24 A. Yes. We have officers that will watch,
25 basically, the police line to make sure people don't

1 cross over into the secure area.

2 MS. GEORGE: Court's indulgence.

3 BY MS. GEORGE:

4 Q. In addition to the information you just
5 provided, does the park police attempt to record
6 demonstrations during the mass arrest procedure?

7 A. Yes.

8 Q. Please tell the Court what, if anything, is
9 done to attain that goal.

10 A. Well, our identification unit will come out,
11 and they will videotape and also take photographs of
12 the demonstration.

13 Q. And what's the purpose of that?

14 A. That's for court purposes, and also for
15 liability reasons if the job is sued.

16 Q. Let me direct your attention to November 15,
17 2010. On that date you said you reported for a
18 demonstration in the area of the White House sidewalk;
19 is that correct?

20 A. Yes.

21 Q. Do you know whether the park police was
22 actually recording the events that were occurring when
23 you arrived?

24 A. No.

25 Q. Did you view a video in reference to

1 November 15, 2010?

2 A. Yes.

3 Q. And what does that video depict?

4 A. It shows the demonstrating group committing
5 their -- doing their demonstration on the White House
6 sidewalk.

7 Q. Are you actually in the video?

8 A. Yes.

9 MS. GEORGE: Your Honor, I believe it's
10 already been introduced into evidence, so the
11 government will ask to play it at this time.

12 MR. FELDMAN: It's admitted, yes.

13 THE COURT: Please, let's see it.

14 (Whereupon, the video was played.)

15 BY MS. GEORGE:

16 Q. Is that their voice, Lieutenant LaChance?

17 A. Yes.

18 MR. FELDMAN: Judge, I can't hear.

19 THE COURT: I can't hear. And it's also
20 stopped. Why is it stopped?

21 MS. GEORGE: Just a second, Your Honor.

22 THE COURT: Take it down and start all over
23 again so we can see the whole thing and simultaneously
24 hear the video.

25 MR. FELDMAN: I can't hear this gentleman.

1 THE COURT: All right. Let's see what we
2 can do.

3 (Whereupon, the video resumed playing.)

4 MS. GEORGE: Can you see it, Your Honor?

5 THE COURT: Okay. Wait a minute, hold on.
6 Stop.

7 I just heard the words, "Are you guys
8 ready?" Is that your voice?

9 THE WITNESS: Yes, sir.

10 THE COURT: All right. So that's the first
11 thing I hear you say, "Are you guys ready?" Who are
12 you speaking to? What guys?

13 THE WITNESS: My officers.

14 THE COURT: Your officers. We can tell
15 they're your officers, because they are dressed in the
16 blue uniforms, like the sergeant we saw with the
17 baseball cap.

18 THE WITNESS: Yes. They are dressed either
19 in blacks or light blue.

20 THE COURT: Which is different from Officer
21 Easter, who was in his pale blue park police --

22 THE WITNESS: Yes.

23 THE COURT: I understand. So as we look at
24 this, your guys, as you put it, are dressed like you?

25 THE WITNESS: Yes.

1 MS. GEORGE: Your Honor, can I ask a
2 follow-up question?

3 BY MS. GEORGE:

4 Q. Are there other police officers with the
5 park police who are dressed differently from the black
6 SWAT uniform who are participating in the procedure?

7 A. Yes.

8 THE COURT: All right.

9 (Whereupon, the video resumed playing.)

10 THE COURT: Why is it stopped? All right
11 let's -- I don't know if it's the video feed to the
12 screen.

13 MS. GEORGE: You say it stopped?

14 THE COURT: Is obliterated.

15 MS. GEORGE: It's probably the cord. When I
16 was trained on setting it up, the cord, if it's not
17 connected properly, will not -- it's not the video.

18 MR. FELDMAN: It's a good video, Judge.
19 This is a terrible screen. Can we use ours? We have
20 a fabulous one, much better. You want to play ours,
21 Judge?

22 THE COURT: Sure. Theirs is directed by
23 Steven Spielberg.

24 MR. FELDMAN: We have a much better
25 technology. We have a projector, we have a wall, big,

1 nice. I don't want to do their case for them, Judge,
2 but let's be fair.

3 THE COURT: All right.

4 MR. FELDMAN: We'll need two minutes to have
5 our assistants help.

6 THE COURT: All right, take your time.

7 MR. FELDMAN: Your Honor.

8 THE COURT: Yes, sir.

9 MR. FELDMAN: Your Honor, can my young
10 person and her young person work together?

11 THE COURT: Sure.

12 MR. FELDMAN: Thank you.

13 THE COURT: I'll be right back, Madam Clerk.

14 THE COURTROOM DEPUTY: The court is in
15 recess --

16 THE COURT: No, it's not in recess. I'm
17 just stepping out.

18 THE COURTROOM DEPUTY: Oh, okay.

19 (Whereupon, at 11:00 a.m. a recess was
20 taken, and at 11:05 a.m. the following
21 ensued:)

22 THE COURT: All right, let's recommence. We
23 are going to go back to this one.

24 (Whereupon, the video resumed playing.)

25 MS. GEORGE: Your Honor, at this time can we

1 turn the lights on, please?

2 Your Honor, what I would like to tell the
3 Court is when I set this up, Mr. Hill explained that
4 it gets distorted because the connection from this
5 panel here is not tied into the computer. So if we
6 can call IT, they can fix the problem.

7 THE COURT: Why don't we do this: We are
8 going to break at 11:15. You will call IT then. Can
9 you go to another portion of your examination, and we
10 can return to this?

11 MS. GEORGE: Yes, please, Your Honor.

12 THE COURT: Thank you.

13 MS. GEORGE: To conduct your conference, do
14 you need us to remove our items from the table?

15 THE COURT: Yes, sure.

16 THE COURTROOM DEPUTY: I'll call Mr. Cramer
17 on the break.

18 MS. GEORGE: I believe Mr. Cramer will need
19 to have this set up to work here to fix the problem.

20 THE COURT: If you ask Mr. Cramer to be here
21 at 11:15, we'll take fifteen minutes to get this
22 organized; okay?

23 MS. GEORGE: Thank you, Your Honor.

24 THE COURT: In the meantime, if you proceed
25 with other aspects of this witness, that would be

1 fine; or are you finished?

2 MS. GEORGE: Oh, no, I'm not, Your Honor.

3 THE COURT: All right, thank you.

4 MS. GEORGE: Your Honor, it may be best to
5 wait, because Lieutenant LaChance is connected largely
6 to the video. I'll have to repeat it twice to connect
7 it to the video. So it may be best to wait.

8 MR. FELDMAN: Judge, you know what --

9 THE COURT: Let's see if Mr. Cramer can come
10 up now.

11 MR. FELDMAN: If you want to save time,
12 Judge, I have some questions to ask him directly to
13 Miss George's direct. There's no jury here, let's
14 save time. It's fresh in your mind.

15 THE COURT: Sure. Do you mind?

16 MS. GEORGE: Limited to the questions I've
17 asked.

18 THE COURT: Yeah, okay.

19 MR. FELDMAN: Okay.

20 CROSS-EXAMINATION

21 BY MR. FELDMAN:

22 Q. Lieutenant, how are you? Hello.

23 A. I'm fine, sir.

24 Q. Okay. When you saw, although briefly -- you
25 were giving orders, correct? You were giving orders

1 in the video, correct; yes or no?

2 A. Yes.

3 Q. When you were giving orders, clearly we
4 heard the words "sidewalk" in there; did we not?

5 A. Yes.

6 Q. Okay. Now, at that point isn't it correct,
7 sir, that the person who was taking the government
8 video was located directly in front of your speaker?
9 In other words, you're standing here, and you're
10 talking in your bullhorn; the person, the guy, who is
11 taking the video is over here; yes or no (indicating)?

12 A. Yes. That's correct, sir.

13 THE COURT: Why don't you walk yourself
14 through that for the record, say what you were doing?

15 MR. FELDMAN: Okay, all right.

16 BY MR. FELDMAN:

17 Q. So you agree that you're standing
18 approximately next to the fax?

19 THE WITNESS: Yeah.

20 THE COURT: That's about six feet from you
21 in the courtroom, right?

22 THE WITNESS: Okay.

23 BY MR. FELDMAN:

24 Q. You're standing here?

25 MS. GEORGE: Your Honor, for the record

1 purposes, can Lieutenant LaChance identify on the
2 map --

3 THE COURT: Let counsel do his examination,
4 and then you can clarify.

5 Go ahead, counsel, please.

6 BY MR. FELDMAN:

7 Q. Was it a man or woman taking the video?

8 A. It was a man.

9 Q. Do you remember his name?

10 MS. GEORGE: Objection. Relevance.

11 THE COURT: Overruled.

12 Do you know his name?

13 THE WITNESS: It could have been a couple of
14 people.

15 THE COURT: All right.

16 BY MR. FELDMAN:

17 Q. Let's call him videographer. The
18 videographer is standing -- correct me if I'm wrong --
19 approximately seven feet from you; yes or no?

20 A. I don't know his exact distance, and I'm
21 also assuming that the rear of the fax is the nose to
22 my cruiser.

23 Q. All right, I'll rephrase.

24 Was it more than seven feet, less than seven
25 feet where the videographer was standing from you?

1 A. I'm not sure, sir, because I was looking
2 that way, and he was behind me right here
3 (indicating). But he was within distance of me.

4 Q. I'll rephrase.

5 Who was closer to you, Choi or the
6 videographer?

7 A. I would say the videographer, sir.

8 MR. FELDMAN: I have no further questions at
9 this point.

10 THE COURT: All right.

11 Now, Miss George, did you want to take a
12 break, and we hope Mr. Cramer will be here shortly,
13 and we'll fix this up?

14 THE COURTROOM DEPUTY: He said ten minutes.

15 MS. GEORGE: Yes, Your Honor.

16 THE COURT: Let's break until we're
17 finished, until 11:30.

18 Lieutenant, you're still under oath. Please
19 don't discuss your testimony with anybody else. And I
20 hope at 11:30 we'll be ready to go.

21 (Whereupon, at 11:09 a.m. a recess was
22 taken, and at 11:27 a.m. the following
23 ensued:)

24 THE COURT: How are we doing?

25 MS. GEORGE: Your Honor, we did get it

1 working. Mr. Hill didn't tell me there was a DVD
2 player here, so we are going to play it on the court's
3 DVD.

4 THE COURT: You may.

5 Where is your witness? I want him on the
6 stand, please.

7 MS. GEORGE: Your Honor, would the Court
8 like the government to start it over from the
9 beginning?

10 THE COURT: Yes. I want you to start it
11 from the very beginning.

12 Come back, lieutenant. You're still under
13 oath; okay?

14 MS. GEORGE: Are we on the record?

15 THE COURT: We are. Proceed, counsel.

16 MS. GEORGE: The government is going to
17 start Government Exhibit Number 2 from the beginning
18 at this time.

19 THE COURT: Thank you.

20 (Whereupon, the video was played.)

21 DIRECT EXAMINATION (Cont'd)

22 BY MS. GEORGE:

23 Q. Now, Lieutenant LaChance, you appear in the
24 video. First of all, for the record, there's a screen
25 at your witness stand station there; is that correct?

1 A. Yes.

2 Q. And is your screen active?

3 A. Yes.

4 Q. Can you see Government Exhibit Number 2
5 being played?

6 A. Yes.

7 Q. Okay. You appear at the paused portion of
8 the video to be holding a piece of paper; is that
9 correct?

10 A. Yes.

11 Q. Could you please describe for the Court what
12 that piece of paper is?

13 A. That's my warning sheet.

14 (Government's Exhibit Number 47 was
15 marked for identification.)

16 MS. GEORGE: May I approach the witness with
17 what has been marked as Government Exhibit 47, Your
18 Honor?

19 MR. FELDMAN: Without objection, Your Honor,
20 in evidence.

21 MS. GEORGE: So the government will move to
22 admit it into evidence at this time.

23 THE COURT: It will be admitted.

24 (Government's Exhibit Number 47,
25 previously marked for

1 identification, was received in
2 evidence.)

3 THE COURTROOM DEPUTY: What is the exhibit
4 number, I'm sorry?

5 BY MS. GEORGE:

6 Q. What is Government Exhibit Number 47?

7 A. That's my warning sheet.

8 Q. Okay. And is that a copy of the document
9 that you were holding on to? Is that the document
10 that you were holding as you're depicted in the video?

11 A. It looks like a copy.

12 Q. And does Government's Exhibit Number 47
13 actually -- what's on it? Just read to the Court,
14 please, the first part that you already read in the
15 video.

16 MR. FELDMAN: Objection. I didn't hear him
17 read it in the video.

18 THE COURT: Right. That's a good point.
19 The objection is well taken.

20 What is the object you're holding in your
21 hand?

22 THE WITNESS: The warning sheet that I read.

23 THE COURT: Is that the same warning sheet
24 that you read that day?

25 THE WITNESS: Yes.

1 THE COURT: All right. Please read it.

2 THE WITNESS: "Attention, this is Lieutenant
3 LaChance of the United States Park Police. You are in
4 violation of regulations applicable to this area,
5 specifically that any individuals may demonstrate
6 while carrying signs on the center portion of the
7 sidewalk comprising ten yards on either side of the
8 center point on the sidewalk if they continue to move
9 along the sidewalk. You must leave the closed portion
10 of the White House sidewalk now. All persons
11 remaining on the closed portion of the White House
12 sidewalk will be arrested."

13 BY MS. GEORGE:

14 Q. And did you read that exact portion in the
15 video --

16 A. Yes.

17 Q. -- on that day?

18 And the sheet that you have there,
19 Government Exhibit Number 47, is that a document that
20 is part of the general mass arrest procedure that the
21 park police uses?

22 MR. FELDMAN: Objection. Irrelevant at this
23 point.

24 THE COURT: It's overruled.

25 But this warning you give is a standardized

1 warning when events like this occur?

2 THE WITNESS: Yes, sir.

3 THE COURT: Thank you. And you don't
4 deviate from that? This is the one you give?

5 THE WITNESS: Well, we have several
6 different paragraphs to read.

7 THE COURT: But --

8 THE WITNESS: Yes, they are standard canned
9 speeches that we read, sir.

10 THE COURT: Canned speeches, okay. And the
11 piece of paper that you're holding in the video, is
12 that the same exact piece of paper you're holding in
13 your hand?

14 THE WITNESS: Yes, or a copy of it.

15 THE COURT: Or a copy of it. All right,
16 thank you.

17 BY MS. GEORGE:

18 Q. And in the video you read this warning, was
19 that the first, second, third, fourth, fifth time the
20 warning was read?

21 A. That was the first warning.

22 Q. And could you please explain to the Court
23 how the warnings are read and how many times they are
24 read?

25 MR. FELDMAN: Well, again, Judge --

1 THE COURT: All right.

2 Now, when you were confronted with this
3 scene we have now seen you, is this the first time you
4 do this?

5 THE WITNESS: Yes.

6 THE COURT: Are we then going to see other
7 instances of your doing it?

8 THE WITNESS: Yes.

9 THE COURT: So you will do it more than once
10 that day?

11 THE WITNESS: Yes, sir.

12 BY MS. GEORGE:

13 Q. And how many times do you do it as part of
14 the mass arrest procedure?

15 A. Three times.

16 Q. And is there a period of time that you wait
17 between each warning?

18 MR. FELDMAN: Judge, objection. You keep on
19 asking the right questions, okay, and I guess there's
20 no formal objection to inartfulness, but the real
21 objection is irrelevant; is relevance. It's
22 irrelevant what he does yesterday.

23 THE COURT: But your procedure, you've done
24 this before, right?

25 THE WITNESS: Yes, sir.

1 THE COURT: When do you it, do you do it
2 more than once?

3 THE WITNESS: Yes, sir.

4 THE COURT: And so today we're going to see
5 it more than once?

6 THE WITNESS: Yes, sir.

7 THE COURT: Thank you.

8 And that's part of the way you usually do
9 it, right?

10 THE WITNESS: Yes.

11 THE COURT: Thank you.

12 BY MS. GEORGE:

13 Q. And how much time elapsed between each
14 warning?

15 MR. FELDMAN: It elapses or lapsed? That's
16 relevant?

17 THE COURT: No. Is there anything on the
18 sheet of paper that warns you how much time you're
19 supposed to give between the first, the first and the
20 second, and the second and the third?

21 THE WITNESS: Yes, sir.

22 THE COURT: And it says that on that piece
23 of paper?

24 THE WITNESS: Yes, sir.

25 THE COURT: Could you show me where?

1 THE WITNESS: Right there, sir, in
2 the (indicating) --

3 THE COURT: All right. I'll read into the
4 record what it says. "Read three times at
5 approximately two minutes in between. On the third
6 warning add, 'this is your third and final warning.
7 If you do not leave now, you will be arrested.'"

8 THE WITNESS: Yes, sir.

9 THE COURT: Okay.

10 BY MS. GEORGE:

11 Q. After the third warning, do you wait any
12 additional time before any one is arrested?

13 A. Yes.

14 Q. How much time?

15 A. Approximately two minutes.

16 MR. FELDMAN: Is it waited or wait, Judge?
17 I keep on objecting. Maybe I'm missing something.
18 Why is it relevant what the procedure is?

19 THE COURT: Let's see if we can try it
20 again.

21 You're gonna do it three times, then you're
22 going to wait two minutes; we are going to see that
23 again today?

24 THE WITNESS: Sir, I wait approximately two
25 minutes between each warning, and then approximately

1 two minutes after the third and final warning.

2 THE COURT: So the sequence, then, takes --
3 you start two minutes, two minutes, two minutes; two
4 minutes you move in and arrest, right?

5 THE WITNESS: Yes, sir.

6 THE COURT: Thank you.

7 (Whereupon, the video resumed playing.)

8 THE COURT: All right, the record should
9 reflect the video is starting again.

10 MS. GEORGE: I'm going to pause the
11 recording.

12 BY MS. GEORGE:

13 Q. Now, Lieutenant LaChance, was that the
14 second warning?

15 A. Yes.

16 THE COURT: Between the first and the
17 second, the people we are looking at right now begin
18 to speak as well.

19 Now, the video doesn't show it to me, but
20 they now have turned around and are now facing you; is
21 that right?

22 THE WITNESS: Yes, sir.

23 THE COURT: All right. You could certainly
24 hear what they were chanting; could you not?

25 THE WITNESS: Yes, sir.

1 THE COURT: Thank you.

2 BY MS. GEORGE:

3 Q. And just one additional question, Your
4 Honor.

5 Could you please approximately tell the
6 Court how close your vehicle was to the center portion
7 of the White House sidewalk where the individuals are
8 standing to the ledge?

9 A. I was real close to the edge of the
10 sidewalk, within a couple of feet, and then just about
11 thirty feet is the width of the sidewalk.

12 THE COURT: You say about thirty feet. Has
13 anybody ever measured it?

14 THE WITNESS: I'm sure, sir.

15 THE COURT: You haven't?

16 THE WITNESS: No.

17 THE COURT: Well, let me see your estimate
18 of thirty feet. Look around the courtroom, all right,
19 and show me what you think thirty feet is.

20 THE WITNESS: Probably to the door right
21 there, sir (indicating).

22 THE COURT: Well, there are a lot of doors.

23 THE WITNESS: The door under the clock, sir.

24 THE COURT: Stand up, if you would. You are
25 measuring the distance from yourself to that door,

1 right? That's, in your view, thirty feet?

2 THE WITNESS: About thirty feet, sir.

3 THE COURT: And you're estimating as well,
4 that your cruiser is thirty feet from these people?

5 THE WITNESS: About thirty feet, sir.

6 THE COURT: All right, good.

7 MS. GEORGE: Your Honor, could the record
8 reflect that the clock that Lieutenant LaChance is
9 referencing is the one that the numbers are actually
10 affixed to the left wall from the bench, on the wall
11 of the courtroom?

12 THE COURT: So be it.

13 BY MS. GEORGE:

14 Q. Also, you appeared in the video to be
15 holding some type of amplification device. Could you
16 please explain to the Court how that device works and
17 if there's a speaker connected to it?

18 A. There's a PA system, or public address
19 system, that is installed in my force vehicle that's
20 the hand mic. And it goes through the radio system,
21 and then the speaker box is in the grille of the
22 cruiser, the front grille of the cruiser.

23 Q. And do you know where in that front grille
24 area the speaker is located?

25 A. In the middle.

1 Q. And do you know how close the speaker is to
2 the grille on the front of your car?

3 A. Ah, a few inches.

4 MS. GEORGE: At this time, Your Honor, I'll
5 continue to play government's Exhibit Number 2.

6 THE COURT: Please do.

7 (Whereupon, the video resumed playing.)

8 MS. GEORGE: Your Honor, I'm going to pause
9 Government Exhibit Number 2.

10 BY MS. GEORGE:

11 Q. Lieutenant LaChance, could you tell the
12 Court, was that the final warning?

13 A. Yes.

14 Q. From the time of the first warning until the
15 third warning, did any of the individuals that were
16 standing on the ledge of the White House fence attempt
17 to leave?

18 MR. FELDMAN: Objection. Irrelevant.
19 There's no testimony about the fence. I only heard
20 the sidewalk, Your Honor.

21 THE COURT: Repeat your question, please.

22 BY MS. GEORGE:

23 Q. Lieutenant LaChance, where are the
24 individuals in the video standing?

25 A. They are standing on the ledge.

1 Q. And did any of those individuals attempt to
2 leave the ledge and leave the perimeter area?

3 A. No.

4 Q. Did any of them indicate to you that they
5 wanted to leave?

6 A. No.

7 Q. Did any of them give you any hand gesture to
8 try to get your attention?

9 A. No.

10 MS. GEORGE: Court's indulgence.

11 (Pause.)

12 MS. GEORGE: Your Honor, with the Court's
13 permission, I'll continue to play Exhibit Number 2 at
14 this time.

15 THE COURT: Sure.

16 (Whereupon, the video resumed playing.)

17 MS. GEORGE: Your Honor, I would like to
18 pause it now.

19 BY MS. GEORGE:

20 Q. Do you hear that voice that's saying "I am
21 somebody" --

22 A. Yes.

23 Q. -- at this portion of Government's Exhibit
24 Number 2?

25 A. Yes.

1 Q. Where is that person?

2 A. In Lafayette Park.

3 Q. Okay. And where is Lafayette Park in
4 relationship to where you were by your cruiser giving
5 the warnings?

6 A. Directly behind me.

7 Q. Where does Lafayette Park begin in
8 relationship to your cruiser?

9 A. On the other side of Pennsylvania Avenue.

10 MS. GEORGE: I'm gonna continue to play it
11 at this time, Your Honor.

12 (Whereupon, the video resumed playing.)

13 BY MS. GEORGE:

14 Q. The voice that is starting the chant, is
15 that person -- the voice still coming from Lafayette
16 Park?

17 A. Yes.

18 Q. Lieutenant LaChance, I'm going to mark a red
19 sticker with the initials "LP" on it. Would you
20 please take the red sticker and mark on Government
21 Exhibit Number 1 the direction from which that voice
22 was coming?

23 A. (Complying.)

24 Q. I'm also going to mark another red sticker
25 with your first and last initial, apostrophe S and the

1 word "car." Would you please mark on Government
2 Exhibit Number 1 where your car was parked when you
3 were giving the warnings?

4 A. (Complying.)

5 Q. Now, if you can, on Government's Exhibit
6 Number 1, the red sticker with "LP" and the red
7 sticker with "RL's car" appear to be very close to
8 each other; is that correct?

9 A. Ah, yes, on this map.

10 Q. Could you please tell the Court, if you can
11 estimate, the actual distance from where the voice
12 appears to be coming from and where your car was?

13 A. It was at least twice the distance of the
14 voice on the sidewalk.

15 THE COURT: So what --

16 BY MS. GEORGE:

17 Q. So what's the width of the sidewalk --

18 THE COURT: If I may, Miss George.

19 MS. GEORGE: Okay, I'm sorry.

20 THE COURT: Pennsylvania Avenue and
21 Lafayette Park -- and I can take judicial notice to
22 the fact that that street is now blocked to traffic --
23 before it was blocked, did it have two lanes of
24 traffic going in each direction, if my memory serves
25 me right?

1 THE WITNESS: Honestly, it was a little
2 before --

3 THE COURT: Your time?

4 THE WITNESS: -- my time.

5 THE COURT: People say that to me a lot.

6 MR. FELDMAN: I don't think there's any
7 traffic, Judge.

8 THE COURT: There was a point in time when
9 Pennsylvania Avenue was open to traffic, right?

10 THE WITNESS: Yes.

11 THE COURT: Therefore, as you came up that
12 street, you never saw that portion of our city when
13 there was traffic going up and down?

14 THE WITNESS: No.

15 THE COURT: Thank you.

16 MS. GEORGE: May I continue, Your Honor?

17 THE COURT: Sure.

18 BY MS. GEORGE:

19 Q. Lieutenant LaChance, you just testified that
20 the distance between the two red stickers on
21 Government's Exhibit Number 1 was twice the distance
22 of the width of the sidewalk; is that correct?

23 A. At least.

24 Q. Could you please tell the Court
25 approximately what that distance is?

1 A. I would estimate at least seventy feet.

2 Q. Did you say seven zero?

3 A. Yes.

4 MS. GEORGE: Your Honor, with permission, I
5 could continue to play Government's Exhibit Number 2
6 at this time?

7 THE COURT: Yeah.

8 (Whereupon, the video resumed playing.)

9 MS. GEORGE: I would like to pause
10 Government's Exhibit Number 2.

11 BY MS. GEORGE:

12 Q. Did you just hear the statement that was
13 made on the tape?

14 A. Play it one more time, I'm sorry.

15 MS. GEORGE: Now, forgive me, Your Honor, if
16 I mess this up. I'm going to try.

17 THE COURT: Go back, just click it.

18 MS. GEORGE: Your Honor, I'm attempting to
19 fast forward to the exact position where we stopped.

20 THE COURT: I know what you're doing.

21 (Pause.)

22 BY MS. GEORGE:

23 Q. Lieutenant LaChance, there was a moment
24 before I paused it where the video focused on the
25 gentleman in the center with the black beret hat on.

1 Do you know who that person is?

2 A. Yes.

3 Q. Who is that person?

4 A. That's Daniel Choi.

5 Q. Do you see that person in court today?

6 A. Yes.

7 Q. Now, also, where the video was paused now on
8 Government's Exhibit Number 2, to the left of your
9 screen there's some officers attempting to, or having
10 contact with one of the demonstrators; is that
11 correct?

12 A. Yes.

13 Q. And, if you know, what are they doing at
14 this point in time?

15 A. They're cutting his handcuff off and
16 arresting him.

17 Q. Now, how did they know to move in to arrest
18 that particular --

19 MR. FELDMAN: Objection. Competency.

20 THE COURT: Yeah, let's see if we can work
21 backwards.

22 You've cut the tape at the point -- you've
23 lost me a bit.

24 We saw Lieutenant Choi speak, then you
25 stopped it. Is there anything between Lieutenant Choi

1 speaking and the event we're about to see?

2 MS. GEORGE: Your Honor, just for the record
3 purposes, I stopped there because I thought we had
4 already -- I could rewind it for you.

5 THE COURT: No, it's okay. But now you're
6 going to play it from this point on?

7 MS. GEORGE: I'm trying to ask Lieutenant
8 LaChance what the officers are doing, if he knows.

9 THE COURT: All right.

10 Could you see what these men were doing?

11 THE WITNESS: Yes.

12 THE COURT: What are they doing?

13 THE WITNESS: Arresting the individuals.

14 THE COURT: And that took place right in
15 front of you?

16 THE WITNESS: Yes.

17 BY MS. GEORGE:

18 Q. And my question is --

19 THE COURT: You used the word "cut," what
20 did you mean? Cutting what?

21 THE WITNESS: They are using the bolt
22 cutters to remove the handcuffs.

23 THE COURT: This is the first time I've
24 heard anything about handcuffs.

25 When did you first become aware that they

1 would have to do that?

2 THE WITNESS: Well, I saw that they had
3 handcuffs, but then they couldn't get the handcuffs
4 off for some reason, so they had to use bolt cutters
5 to cut them.

6 MR. FELDMAN: Objection to the term. Who's
7 "they," the Defendants or the cops?

8 THE COURT: Let's see if we can answer that.

9 In the far left, look, lieutenant, I see a
10 man holding a piece of wood. Is that the bottom end
11 of a bolt cutter?

12 THE WITNESS: Those are bolt cutters.

13 THE COURT: So that's the officer with the
14 bolt cutters?

15 THE WITNESS: Yes.

16 THE COURT: He's moved to the fence, and
17 he's beginning to cut the handcuffs?

18 THE WITNESS: Yes.

19 THE COURT: And this is -- is this the first
20 time you become aware of the fact that they have
21 handcuffs on?

22 THE WITNESS: No.

23 THE COURT: You knew that?

24 THE WITNESS: Yes.

25 THE COURT: How did you know that?

1 THE WITNESS: Because when I got there I
2 could see.

3 THE COURT: Oh, you could see. You could
4 see what?

5 THE WITNESS: I saw that they had handcuffs
6 on.

7 MS. GEORGE: At the time that --

8 THE COURT: I'm a little confused,
9 lieutenant. They were either facing the White House
10 or turned towards you.

11 THE WITNESS: Sir, either way they were
12 faced, I saw that there were handcuffed.

13 THE COURT: With your own eyes you saw
14 handcuffs?

15 THE WITNESS: My own eyes I saw handcuffs.

16 BY MS. GEORGE:

17 Q. At the point where Exhibit 2 is paused, the
18 officers are dealing with what individuals in the line
19 of individuals on the ledge?

20 A. It looks like the last one on the left.

21 Q. And where are you standing at the time that
22 you observed this?

23 A. I'm still in relatively the same position on
24 the -- by the cruiser.

25 Q. Do you know who the officers are that are

1 assisting -- let me just ask you this: The person
2 with the bolt cutters, is that person a law
3 enforcement officer?

4 A. Yes.

5 Q. Do you know the name of that officer?

6 A. Robert Zarger.

7 Q. The other officers, the three officers that
8 were there, do you know the names of those officers?

9 A. The short baldheaded one is Mark Adamchik,
10 and the other one in front of him is Jerome Udamire.

11 Q. Who is to the right of Sergeant Adamchik?

12 A. He's another officer. I'm not exactly sure.

13 (Whereupon, the video resumed playing.)

14 BY MS. GEORGE:

15 Q. Now, Lieutenant LaChance, was that the first
16 individual that was arrested on November 15, 2010?

17 MR. FELDMAN: Asked and answered.

18 THE COURT: It's overruled.

19 Is that the first one?

20 THE WITNESS: Yes, sir.

21 THE COURT: Okay, thank you.

22 Go ahead.

23 BY MS. GEORGE:

24 Q. Now, after that person was arrested, did any
25 of the other individuals that are on the ledge, which

1 is being shown on Government Exhibit 2 right now,
2 trying to leave?

3 A. No.

4 Q. Did anyone indicate that they wanted to
5 leave?

6 A. No.

7 Q. Did anyone in any way, verbal or by gesture?

8 A. No.

9 MR. FELDMAN: Well, objection, Judge. It
10 would be impossible for them to leave if they were
11 handcuffed.

12 THE COURT: Thank you, counsel. I probably
13 would have figured that out. If that was an
14 objection, it was overruled.

15 But to your understanding now, all of these
16 people are handcuffed to the fence?

17 THE WITNESS: Yes.

18 THE COURT: All right.

19 BY MS. GEORGE:

20 Q. Are both their hands handcuffed to the
21 fence?

22 A. No.

23 THE COURT: Oh, there's only one hand? That
24 was why they could turn around, I take it?

25 THE WITNESS: Yes, sir.

1 THE COURT: I understand. Thank you,
2 officer -- lieutenant.

3 BY MS. GEORGE:

4 Q. Based upon your observation, did they have
5 the ability to indicate somehow that they wanted to
6 leave?

7 A. Yes.

8 Q. And did they?

9 A. No.

10 Q. Now, you indicated that these officers were
11 in the process of arresting at least that one
12 individual. Could you tell the Court whether in
13 effectuating the mass arrest process there's a
14 procedure for when you indicate arrest should be made?

15 MR. FELDMAN: Well, Judge, again, we're into
16 the meat.

17 THE COURT: Let me see if I can understand
18 something.

19 Did you give the command?

20 THE WITNESS: Yes.

21 THE COURT: Tell us how you made the
22 command.

23 THE WITNESS: Through verbally and
24 nonverbally.

25 THE COURT: Tell us what you did that day.

1 THE WITNESS: I'm not exactly sure what I
2 did that day.

3 THE COURT: What I'm trying to figure out,
4 are you still using the mechanical device that
5 amplifies your voice?

6 THE WITNESS: No. I'm making contact with
7 my sergeant.

8 THE COURT: So you are walking up to him?

9 THE WITNESS: Or making eye contact with him
10 to let him know.

11 THE COURT: Do you remember what you did
12 that day?

13 THE WITNESS: No, I don't.

14 THE COURT: But somehow you commun -- the
15 sergeant, is he the African-American gentlemen?

16 THE WITNESS: No, the bald.

17 MR. FELDMAN: Adamchik.

18 THE COURT: So Adamchik, you give Adamchik
19 the signal, but you don't remember what signal?

20 THE WITNESS: I'm sorry, sir.

21 THE COURT: Don't be sorry, you just don't
22 remember. That's all we can ask. Thank you.

23 BY MS. GEORGE:

24 Q. And during the training of the officers for
25 the mass arrest process, is training given regarding

1 that particular subject?

2 MR. FELDMAN: Objection. What -- how is
3 that relevant?

4 THE COURT: Well, let me see. How would I
5 know -- if I were an inferior in your command, how
6 would I know that I'm now supposed to make an arrest?

7 THE WITNESS: Well, I told my sergeant. My
8 sergeant, he directs the officers on what to do.

9 THE COURT: So typical military chain of
10 command?

11 THE WITNESS: Yes, sir.

12 THE COURT: So you give the order to the
13 sergeant, the sergeant communicates it, and off you
14 go?

15 THE WITNESS: I give the order, he does the
16 work.

17 THE COURT: And the man with the bolt
18 cutters, he, in fact, is a police officer?

19 THE WITNESS: Yes.

20 THE COURT: Thank you.

21 BY MS. GEORGE:

22 Q. Do you know whether Sergeant Adamchik spoke
23 to each and every officer and communicated that the
24 arrest was now to begin?

25 A. I would assume that he --

1 MR. FELDMAN: Objection.

2 THE COURT: Let him finish the answer.

3 THE WITNESS: I would assume he gives
4 appropriate information to each officer. That's what
5 I trust him to do, to manage the arrest of each
6 person. That's his job.

7 MR. FELDMAN: Objection. Irrelevant.
8 Incompetent. And he's not the best witness.

9 THE COURT: In any event, putting your
10 assumption to the side, in this military -- this is a
11 military structure?

12 THE WITNESS: It's a paramilitary, yes, sir.

13 THE COURT: Paramilitary structure, I
14 understand. Thank you.

15 BY MS. GEORGE:

16 Q. In the course of receiving the mass arrest
17 training, do officers receive training regarding the
18 arrest procedure?

19 MR. FELDMAN: Objection. Asked and
20 answered. Irrelevant.

21 THE COURT: Overruled. Is such a training
22 provided; yes or no?

23 THE WITNESS: We don't have specific
24 training for mass arrest. We have training for crowd
25 control, and we do a briefing before each incident

1 such as this to indicate to the officers what's
2 expected of them and how to -- how to appropriately
3 conduct themselves for these kinds of details.

4 THE COURT: Thank you.

5 BY MS. GEORGE:

6 Q. And would the demonstration on November
7 15th, 2010, according to the park police, be included
8 in the concept of crowd control?

9 A. Yes.

10 Q. And in that training on crowd control, is it
11 communicated to the officers when they should be
12 arresting individuals?

13 A. Ah, that is -- that is a portion of the
14 crowd control training.

15 Q. And could you please describe that to the
16 Court?

17 A. But the crowd control training --

18 MR. FELDMAN: Objection, Judge. Just
19 because he concludes that those demonstrators are
20 crowds is irrelevant. That's his conclusion. He's
21 not the judge.

22 THE COURT: Okay. Well, I am.

23 But there is some training, and you
24 consider -- you consider this training pertaining to
25 what happened that day; is that right?

1 THE WITNESS: It's the closest training we
2 have to this kind of situation.

3 THE COURT: Gotcha.

4 BY MS. GEORGE:

5 Q. Do officers receive training, in this type
6 of situation, as to when and when they should not
7 arrest individuals?

8 A. Like I said, in the crowd control training
9 they are trained how to deal with crowds, how to deal
10 with agitators, how to deal with arresting people and
11 safely maneuvering in crowds. But like I said, this
12 specific setup like this is not specifically covered.

13 Q. Were all the individuals shown on the ledge
14 of Government Exhibit Number 2 arrested that day?

15 A. Yes.

16 (Whereupon, the video resumed playing.)

17 MS. GEORGE: I would like to pause it at
18 this point in time.

19 BY MS. GEORGE:

20 Q. Lieutenant LaChance, there's a voice that is
21 being heard on Government's Exhibit Number 2 at this
22 point. Is that voice male or female as far as you can
23 tell?

24 A. Female.

25 Q. Is that voice different or the same as the

1 voice you referenced earlier in your testimony that
2 was coming from approximately seventy feet from behind
3 your cruiser?

4 A. Different.

5 (Whereupon, the video resumed playing.)

6 THE COURT: That's the voice, right?

7 MS. GEORGE: Is that yes or no, for the
8 record?

9 THE WITNESS: Yes.

10 MR. FELDMAN: The woman talking "Jesus" and
11 that stuff, right, Judge?

12 THE COURT: Yes.

13 MS. GEORGE: I'm sorry, I didn't hear
14 Mr. Feldman's statement.

15 THE COURT: This woman is saying something
16 that -- she's babbling. She's not talking nothing
17 about anything we're concerned about.

18 MR. FELDMAN: I'm concerned, Judge.

19 THE COURT: I know what you mean. We're not
20 concerned about the substance of what she's saying.
21 We are concerned about the fact that she's speaking
22 simultaneous.

23 MR. FELDMAN: Thank you.

24 (Whereupon, the video resumed playing.)

25 BY MS. GEORGE:

1 Q. Lieutenant LaChance, did you just see
2 Officer Zarger doing something in relationship to the
3 White House fence?

4 A. Yes.

5 Q. Did you actually observe that on the day of
6 November 15, 2010?

7 A. Well, I was watching most of it. I can't
8 say specifically that I was watching at that exact
9 moment.

10 Q. Okay.

11 MS. GEORGE: I'll move on at this time, Your
12 Honor.

13 (Whereupon, the video resumed playing.)

14 MS. GEORGE: Turn it down?

15 MR. FELDMAN: I'm getting a headache.

16 (Whereupon, the video resumed playing.)

17 THE COURT: Stop for just a second.

18 I take it this same procedure will continue
19 with everyone else on the ledge?

20 MS. GEORGE: That's correct, Your Honor, but
21 the government will request to play the tape at least
22 until the Defendant is arrested.

23 THE COURT: All right. I just wondered. Is
24 he the last person to be arrested?

25 MS. GEORGE: No, he is not.

1 May I continue?

2 THE COURT: Yes.

3 (Whereupon, the video resumed playing.)

4 THE COURT: Thank you.

5 BY MS. GEORGE:

6 Q. Lieutenant LaChance, at the point where
7 Government Exhibit 2 is paused, how many people are
8 left on the White House fence at this point in time?

9 A. Three.

10 Q. And what are their sexes?

11 A. Male.

12 Q. For the record, can you just generally
13 describe what they're wearing so the record reflects
14 what portion of the tape we're stopped at?

15 A. On my left has a blue jean jacket on, a tie,
16 button down shirt, blue jeans. Gentleman in the
17 middle has a brown long sleeve T-shirt, blue jeans.
18 And the gentleman on the far right is wearing army
19 fatigues and a flag beret.

20 Q. From the viewpoint you had from your cruiser
21 on November 15th, 2010, is the gentleman you described
22 in the fatigues the last person to the right of you at
23 the fence?

24 A. Is that the last person to the right?

25 Q. Of you, from where you're standing.

1 A. I'm sorry.

2 Q. I can rephrase the question.

3 How many people were on the White House, the
4 ledge on the White House fence?

5 A. There's three.

6 MR. FELDMAN: Objection. Asked and
7 answered.

8 THE COURT: All right. There were three
9 people, and there's one left. The three people
10 left -- as you're looking at this, the one to your
11 right is the fella in fatigues is that right?

12 THE WITNESS: Yes.

13 THE COURT: Thank you.

14 BY MS. GEORGE:

15 Q. As you observed the activities that day, was
16 he the last person that was arrested?

17 A. Ah, I can't remember right now. I know
18 eventually they were all arrested.

19 Q. Okay. And there's an officer depicted at
20 this point on Government's Exhibit Number 2. Do you
21 know what that officer is?

22 A. That is Officer Easter.

23 Q. Earlier you described for the Court your
24 tenure with the U.S. Park Police. Could you please
25 tell the Court in that time period you began

1 responding to the White House sidewalk and making
2 arrests there?

3 A. Ah, primarily when I became SWAT commander.

4 Q. And when, specifically? What year was that?

5 A. That was 2010.

6 Q. And between 2010 -- what year 2010?

7 A. In May.

8 Q. I mean what month, I'm sorry?

9 A. May of 2010.

10 Q. So between May of 2010 and November 15th,
11 2010, approximately how many arrests have you been
12 involved in at the White House fence?

13 A. Hundreds.

14 Q. Could you give some sense of how many
15 hundreds?

16 A. Probably over a thousand.

17 Q. And in those thousand arrests, were there
18 individuals or groups that were arrested that did not
19 connect or affixed themselves to the White House
20 fence?

21 MR. FELDMAN: Objection. Irrelevance.

22 THE COURT: Sustained.

23 MS. GEORGE: Your Honor, at this point in
24 time it goes directly to the government's legal theory
25 of the case. And this evidence is necessary for the

1 Court to determine whether the Defendants --

2 THE COURT: The regulation requires that
3 there be disobedience to a lawful order. I'm not so
4 sure I understand why rendering oneself stationary
5 advances or detracts from what you have to prove.

6 MS. GEORGE: Your Honor, the government can
7 explain its legal theory, but I would ask that the
8 witness step down at this point in time so he's not
9 influenced by the explanation.

10 THE COURT: No, that's not necessary. The
11 objection being made here is that in this particular
12 instance these people chained themselves to the fence.
13 And I guess you want to know on how many other
14 occasions was that behavior engaged in?

15 MS. GEORGE: No. These are foundational
16 questions. The ultimate question I'm going to ask,
17 which is related to particular evidence that the Court
18 may need to determine that the Defendant failed to
19 obey a lawful order. The government has two different
20 legal theories by which the Court can make that
21 conclusion, and the ultimate question goes to one of
22 those legal theories.

23 THE COURT: Please step down for a second.
24 Go on the other side of that door. We'll call you
25 when we need you.

1 All right, please explain what you mean.

2 (Whereupon, the witness stepped out of the
3 courtroom.)

4 MS. GEORGE: Your Honor, the government has
5 two legal theories that it will present to the Court
6 by which you could find that the Defendant failed to
7 obey a lawful order. The amended criminal complaint
8 indicated -- or filed September 2nd, 2010, alleges the
9 general elements. But in researching the crime,
10 failure to obey a lawful order, the government found
11 two different legal theories.

12 The first one, which is the government's
13 primary legal theory, is that the Court can find that
14 the Defendant failed to obey the lawful order
15 regardless of whether his conduct was lawful or not.
16 So as long as the government establishes, (1), that
17 the government -- that the person giving the order was
18 a government employee or an agent authorized to
19 maintain order and control public access and movement
20 during, (3), other activities, or law enforcement
21 action, where the control of public movement and
22 activities is necessary to maintain order and public
23 safety.

24 So if the government's evidence meets those
25 elements regardless of whether Mr. Choi's conduct was

1 lawful or not, the government has established that he
2 failed to obey a lawful order.

3 There is some case law that indicates,
4 though, in this circuit, that the Court may have to
5 find that the Defendant's conduct was unlawful before
6 it determines the lawfulness of the order. And so
7 given that, the government at this point in time --
8 and the Court does not know which legal theory --
9 given that the government does not know which legal
10 theory the Court will adopt, is attempting to elicit
11 evidence that will provide sufficiency for the Court
12 to find under either legal theory.

13 THE COURT: In that --

14 MS. GEORGE: And the government's theory,
15 secondarily, is that the conduct engaged in by the
16 Defendant constitutes; one, disorderly conduct under
17 the Code of Federal regulations; or, two,
18 demonstrating without a permit under 36 CFR Section
19 7.96. No, 7.96.

20 THE COURT: You want to elicit from this
21 lieutenant what?

22 MS. GEORGE: I want to elicit evidence that
23 supports the elements of disorderly conduct as well as
24 demonstrating without a permit under 36 7.96.

25 THE COURT: What is the disorderliness of

1 his behavior?

2 MS. GEORGE: Court's indulgence. Let me
3 pull out the CFR section.

4 MR. FELDMAN: Judge --

5 THE COURT: Let her finish.

6 MR. FELDMAN: Okay.

7 MS. GEORGE: The disorderly conduct section,
8 Your Honor, for the record, is 36 CFR 2.34.

9 Court's indulgence. I have a lot of case
10 law in here.

11 (Pause.)

12 MS. GEORGE: If the Court may, I located 36
13 7.96 first. May I address that first?

14 Under 36 7.96, you can only give a permit to
15 demonstrate on the White House sidewalk, the Ellipse,
16 and Lafayette Park. 36 7.96 also says that if your
17 group is under twenty-five persons, you do not need a
18 permit to demonstrate on the White House sidewalk as
19 long as you are moving, continuously moving and with a
20 sign. That particular circumstance does not apply in
21 this particular case, because thirteen individuals
22 were standing on the ledge and/or masonry base, which
23 is connected to the fence.

24 THE COURT: Okay.

25 MS. GEORGE: So there's another section of

1 36 7.96 that says you can demonstrate on the White
2 House sidewalk if your group is under twenty-five
3 persons, as long as all other conditions to obtain a
4 permit are met.

5 Well, Mr. Choi and his group --

6 MR. FELDMAN: Objection. Lieutenant.

7 THE COURT: Whatever. Go ahead.

8 MS. GEORGE: Mr. Choi and his group were
9 demonstrating without a permit, because you can't get
10 a permit to demonstrate on the ledge of the White
11 House area.

12 MR. FELDMAN: Objection. There's no case,
13 nor no statute that even refers to the ledge that I
14 found.

15 MS. GEORGE: Well, 36 7.96, Your Honor,
16 specifically defines the White House sidewalk, and it
17 does not include the ledge and/or what people refer to
18 as the masonry base.

19 MR. FELDMAN: Conceded.

20 THE COURT: All right, thank you.

21 MS. GEORGE: At this time the government
22 will move to introduce into evidence and ask the Court
23 to take judicial notice of Title 36 Section 7.96 as
24 well as all the other statutes that the government is
25 referencing at the point in time.

1 THE COURT: Of course.

2 Now, 2, 3, 4 you say is disorderly conduct,
3 and as I understand, you're advancing the legal theory
4 disobedience to the order would be legitimate or would
5 be legitimized by the fact that what the person was
6 doing was legal; therefore, in other words, an order
7 that purported to stop a person from doing what the
8 person could otherwise do is -- doesn't fall within
9 the statute; you can't be disobedient?

10 MS. GEORGE: Your Honor, the case law
11 supports two different theories. One of them, of the
12 government's main theory is the Court does not have to
13 decide whether the conduct by Mr. Choi was lawful or
14 unlawful if it meets all of the elements in 36 CFR
15 2.32(a)(2), which is the specific charge we alleged in
16 the amended criminal complaint.

17 The case law also states that the court
18 determines that the government had to -- has to
19 establish that the -- 2.34 -- that the Defendant's
20 conduct was unlawful as a predicate to the court
21 determining that the order is lawful or was --

22 THE COURT: Obviously.

23 MS. GEORGE: Yes. So under that legal
24 theory, the government would have to present evidence
25 that some -- that his conduct was unlawful under some

1 criminal offense. And the government is arguing to
2 the Court that we believe that he violated the
3 disorderly conduct section of the CFR as well as
4 demonstrating without a permit.

5 THE COURT: Fine. We are going to permit
6 argument about this on the close of your case, but
7 just now what does this have to do with this one
8 question you want to ask?

9 MS. GEORGE: I'm laying a foundation to --
10 so, for example, under disorderly conduct, one of the
11 elements it states that the Defendant must maintain a
12 physically offensive condition. So the government is
13 attempting to elicit evidence that would support a
14 finding of that particular element, as well as all the
15 other elements of disorderly conduct under the CFR.

16 MR. FELDMAN: Judge, I have one thing to
17 say. May I?

18 THE COURT: Sure. Of course.

19 MR. FELDMAN: Thank you, Your Honor.

20 THE COURT: You are going to have an
21 opportunity to address all of this at the close of the
22 case.

23 MR. FELDMAN: I want to put this in your
24 mind, please, sir? Okay? Please, please.

25 THE COURT: Sure.

1 MR. FELDMAN: On Page 15 -- you want to sit
2 down? Both people stand up at the same time?

3 THE COURT: It doesn't matter.

4 MR. FELDMAN: I don't know your practice,
5 Judge. I'm sorry, I'm new here.

6 THE COURT: That's okay.

7 MR. FELDMAN: Page 15 of the adopted
8 admission on March 18, 2011 in front of Your Honor,
9 line --

10 MS. GEORGE: Your Honor --

11 MR. FELDMAN: Excuse me, I'm not finished.

12 MS. GEORGE: I don't have --

13 MR. FELDMAN: You can order it.

14 -- Line 15, "THE COURT:" -- this is public
15 record. The Judge, Judge Facciola -- let me go back.

16 "THE COURT," Line 9, "There's another way to
17 skin the cat.

18 "Disorderly conduct statute, loud and
19 boisterous."

20 Judge Facciola continues. "They were
21 chanting; weren't they?

22 "MISS GEORGE: They were speaking --

23 "THE COURT: Didn't that tend to occasion
24 the breach of the peace?"

25 Here's the adoptive admission, Line 17, Page

1 15, by Miss George -- and we said she speaks for the
2 government -- "They were speaking, according to the
3 officers, but they were not screaming. That's why the
4 officers did not particularly charge them with
5 disorderly conduct under the D.C. offense, Your
6 Honor."

7 Now she's trying to change her theory,
8 hoist -- thereby hoisting herself by her own words.
9 It's solecism, Alice in Wonderland, Judge. What she
10 says is lawful. What does lawful mean? It's what I
11 say it means. That's the problem, Judge, it's the
12 dragon swallowing its own tail. Because they charged
13 the wrong statute.

14 They shouldn't be able to do -- to quote
15 Justice Potter Stewart in *Shuttlesworth versus City of*
16 *Birmingham*, 394 U.S. 147, and I paraphrase -- perform
17 plastic surgery on the statute.

18 Miss George has stood before you for the
19 last ten minutes giving solecism after solecism, Alice
20 in Wonderland joke after Alice in Wonderland joke in
21 contravention of the Supreme Court of the United
22 States, Justice Potter telling the Alabama Supreme
23 Court that they were attempting to perform plastic
24 surgery. It goes further on the statute, Judge. It
25 goes further, Judge. Nobody seems to realize this.

1 And Miss George's putative motion in limine
2 that she says she e-mailed or she filed at 11:30 and
3 it didn't get into my hands until approximately 9:10
4 says I don't want the Defendant talking about DADT.

5 Okay, let's talk about Shuttlesworth. This
6 case is the Shuttlesworth of the 21st century. Over
7 and over again the Honorable Justice Potter Stewart
8 talks about fifty-two people, all Negroes, fifty-two
9 people, all African American, over and over again.
10 And she doesn't want us to talk about these are gay
11 people protesting about Don't Ask Don't Tell. She
12 wants to avail of that. She wants the Court to put
13 judicial blinders on. She wants the Court to perform
14 plastic surgery in this case.

15 If you read the record, what she was talking
16 about the last ten minutes was the most twisted thing
17 I've ever heard. That's my first point, Judge.

18 THE COURT: Let's do this, let me take the
19 lieutenant's testimony, subject to moving to strike at
20 the close of your case on the grounds that it raises
21 an issue that she cannot raise.

22 MS. GEORGE: Your Honor, may I respond?

23 THE COURT: No, you may not. You will have
24 more than sufficient time, I assure you, to address
25 this at the proper time. But I want the government to

1 complete its case.

2 (Whereupon, the witness entered the
3 courtroom.)

4 THE COURT: Thank you, lieutenant. Please
5 take your seat.

6 BY MS. GEORGE:

7 Q. Lieutenant LaChance, I believe I was asking
8 you some questions about the number of arrests that
9 you made at the White House sidewalk. I believe you
10 said between March of 2010 and November -- November
11 the 15th of 2010; is that correct?

12 A. Yes.

13 Q. And you said that it was, I think you said,
14 in excess of a thousand?

15 MR. FELDMAN: Objection. He didn't say
16 that. He said he didn't know, about a thousand or
17 more.

18 THE COURT: He said he made about a thousand
19 or more. Please go ahead.

20 BY MS. GEORGE:

21 Q. These approximate a thousand arrests, did
22 you have an opportunity to arrest the individuals who
23 had not been affixed, chained, or connected to the
24 White House fence?

25 MR. FELDMAN: Objection. Irrelevant and

1 immaterial.

2 THE COURT: Objection overruled, subject to
3 moving to strike at the conclusion of the government's
4 case.

5 Go ahead. Have you locked up such people?

6 THE WITNESS: Yes.

7 BY MS. GEORGE:

8 Q. Could you please explain to the Court the
9 comparison -- could you please discuss the ease or
10 difficulty between those two types of groups, meaning
11 the persons that are not affixed to the White House
12 fence, and the individuals that are connected, such as
13 with handcuffs?

14 MR. FELDMAN: Objection. Immaterial.
15 Continuing.

16 THE COURT: I understand.

17 MR. FELDMAN: Also form, Judge. That form
18 is ridiculous.

19 THE COURT: It's hard to lock people up if
20 they chain themselves than those who don't, right?

21 THE WITNESS: Yes.

22 THE COURT: We are well into the luncheon
23 recess. Do you have anything else?

24 MS. GEORGE: Your Honor, that's depends how
25 the Court wants me to handle the Court's decision to

1 take the motion in limine under advisement. The
2 government can ask the questions that may be addressed
3 by the subject in the motion --

4 THE COURT: No, you don't have to, because
5 you haven't rested yet, and he hasn't indicated
6 whether he is going to present a defense. You can
7 recall him if necessary.

8 MS. GEORGE: Okay, thank you. I do have
9 more.

10 THE COURT: We'll break there. We will
11 recommence at 1:40.

12 MR. FELDMAN: Thank you for your patience,
13 Judge.

14 THE COURT: My pleasure.

15 1:40. We are in recess.

16 Again, lieutenant, please do not discuss
17 your testimony with anyone. Thank you.

18 (Whereupon, at 12:44 p.m. a luncheon recess
19 was taken.)

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REPORTER'S CERTIFICATE

I, Chantal M. Geneus, a Certified Realtime Reporter and Registered Professional Reporter of the United States District Court for the District of Columbia, do hereby certify that I stenographically reported the proceedings in the matter of 10-739M-11, United States of America versus Daniel Choi, on August 29, 2011, in the United States District Court for the District of Columbia, before the Honorable Magistrate Judge John M. Facciola, United States District Judge.

I further certify that the page numbers 1 through 117 constitute the official transcript of the proceedings as transcribed by me from my stenographic notes to the within typewritten matter.

In witness whereof, I have affixed my signature this _____ day of August, 2011.

This certification shall be considered null and void if this transcript is disassembled and/or copied in any manner by anyone other than the signatory below.

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I N V O I C E

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JUDGE: Magistrate Judge John M. Facciola

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